

NO. 34423-8-II

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**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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PIERCE COUNTY, a political subdivision of the State of Washington;  
PIERCE COUNTY REGIONAL SUPPORT NETWORK, a division of  
the Pierce County Department of Human Services; and PUGET SOUND  
BEHAVIORAL HEALTH, a psychiatric facility owned by Pierce County  
Regional Support Network, WASHINGTON PROTECTION AND  
ADVOCACY SYSTEM, INC.,

Respondents,

v.

STATE OF WASHINGTON; and STATE OF WASHINGTON,  
DEPARTMENT OF SOCIAL AND HEALTH SERVICES;  
MARYANNE LINDEBLAD in her official acting capacity as Director of  
Mental Health Division; and ANDREW PHILLIPS in his official capacity,  
as Chief Executive Officer of WESTERN STATE HOSPITAL,

Appellants.

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**BRIEF OF APPELLANTS**

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PM 11/13/04

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## I. INTRODUCTION

This case involves Washington's publicly-funded mental health system. Consistent with trends nationwide, the Legislature directed that most mental health services are to be provided in local communities, with the state psychiatric hospitals reserved for individuals requiring involuntary long-term intensive inpatient care. RCW 71.05.010, RCW 72.23.025, RCW 71.24.016.

Toward that end, the Legislature enacted the Community Mental Health Services Act, RCW 71.24, which *inter alia* directed Appellant State of Washington, Department of Social and Health Services (the Department) to contract with county Regional Support Networks (RSNs) to provide both Medicaid and state-funded mental health services within their respective communities. Pierce County's RSN (PCRSN) is a unit of Pierce County government.

During each biennium since the enactment of RCW 71.24, PCRSN voluntarily contracted with the Department to provide mental health services to its residents. The contracts required the County to develop and maintain sufficient community resources so that its residents could be maintained in the community and not in the state hospitals. The contracts also required the County to not exceed the number of hospital beds allocated to it, and if it did exceed, the County agreed to pay liquidated damages.

This lawsuit arises out of the County's inability or unwillingness to meet obligations under its 2001-2005 contracts with the Department. Most significantly, Pierce County routinely failed to develop adequate community resources to divert patients away from Western State Hospital (WSH). As a result, the County frequently exceeded the number of hospital beds allocated to it, and thereby incurred liquidated damages under the contract. Further, WSH was frequently at or over its maximum bed capacity, in large part because of PCRSN's excess patient admissions. This meant that some long-term care patients committed from Pierce County courts had to remain in PCRSN's custody for short periods of time pending the availability of a bed at WSH.

Rather than making operational changes necessary to live up to its contractual obligations, the County filed this lawsuit invoking a number of legal and equitable theories in an attempt to achieve a judicial redesign of the state mental health system to one more to its liking. Although most of the County's claims for relief were ultimately either rejected by the trial court or abandoned, it was successful in convincing the court to grant both monetary and injunctive relief.

In reaction to the trial court's ruling, the Legislature made "retroactive, remedial, curative and technical amendments" to the pertinent statutes, and specifically provided, *inter alia*, that RSNs do not have standing to seek injunctive relief "relating to (a) the allocation or payment of federal or state funds; (b) the use or allocation of state hospital

beds; or (c) financial responsibility for the provision of inpatient mental health care.” Laws of 2006, ch. 333, §§ 103, 301. Defendants’ motion to vacate the trial court’s injunction based on this legislation was denied.

The trial court’s orders were legally flawed. More importantly, as crafted by the legislative and executive branches of government, the orders have significantly disrupted the balance between state and local responsibilities for providing public mental health services. Accordingly, Defendants appeal.

## **II. ASSIGNMENTS OF ERROR AND ISSUES PRESENTED**

1. Upon finding that an individual meets the statutory grounds for involuntary commitment under RCW 71.05.320, a superior court “shall remand him or her to the custody of the department” for a period of not more than 90 days of involuntary mental health treatment [long-term care], but this provision does not specify that such person has to be admitted to the department’s custody within a particular time frame. The trial ruled that this statute required the Department to accept the individual on the day of commitment or the next day

Error: The trial court erred in entering Finding of Fact I.A and Conclusions of Law 2-7 in its October 7, 2005 summary judgment Order re: Long-Term Care Patients, and incorporating them by reference in

Finding of Fact III.A.1 and Conclusion of Law IV.A.1 in the Findings of Fact and Conclusions of Law dated January 20, 2006.<sup>1</sup>

Issue: Did the trial court err by imposing a mandatory obligation on WSH, to “timely accept” such patients regardless of the hospital’s census, its legislatively-appropriated operating capacity, or the medical director’s medical judgment as to the impact of exceeding capacity on the health and safety of all patients, including current WSH patients, incoming patients and patients from other areas of the state?

2. Under a quasi-contract or breach of contract theory, the trial court ordered the Department to pay costs associated with any PCRSN or Puget Sound Behavioral Health (PSBH) long-term care patient that had to wait for admission to WSH following an order of commitment.

Error: The trial court erred in entering Findings of Fact III.A.2-3,5 and Conclusions of Law IV.A.2-5,6 (the unstruck portion of 6) in the Findings of Fact and Conclusions of Law, and Part A and Part C.2 in the Judgment and Order both dated January 20, 2006.<sup>2</sup>

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<sup>1</sup> The October 7, 2005 Order Re Cross Motions For Summary Judgment On Long Term Patients (Motion re: Long-Term Care) and the January 20, 2006 Findings of Fact and Conclusions of Law are in the record at Clerk’s Papers (CP) 1860-66, and 2696-2711 or 4322-37 respectively. Pursuant to RAP 10.4(c) copies of the orders are in the Appendix at A-1 through A-23.

<sup>2</sup> The January 20, 2006 Judgment and Order is in the record at CP 2691-95 or 4338-42. Pursuant to RAP 10.4(c), a copy of the order is in the Appendix at A-24 through A-28.

Issue: Did the trial court err in holding the Department financially responsible for the costs of care incurred by the County for patients who were committed for long-term care during the time between entry of the commitment order and the patient's admission to WSH, and entering judgment for such costs when there are express contracts relating to these matters, the County was not unjustly enriched, and it did not have clean hands?

3. The trial court issued a mandatory injunction requiring WSH to "timely accept" PCRSN or PSBH long-term care patients, and "timely accept" means the day of the commitment or the next day.

Error: The trial court erred in entering section III.1-2, of its October 7, 2005 summary judgment Order Re: Long-Term Care Patients, Findings of Fact III.A.1. and Conclusion of Law IV.A.1 in the Findings of Fact and Conclusions of Law, and Paragraph C in the Judgment and Order both dated January 20, 2006.

Issue: Did the trial court err in issuing an injunction requiring WSH to "timely accept" PCRSN or PSBH patients committed for long-term care when (1) the statutes do not designate a time frame for admission, (2) there was no showing that any individual patient failed to receive adequate treatment or was otherwise harmed by a delay in admission, and thus the only basis for the injunction was compliance with

a statute as interpreted by the trial court, (3) the contracts did not require WSH to timely accept long-term care patients, and (4) compliance with the court's order required the Department to open up a new ward at WSH and expend funds beyond those appropriated by the Legislature and allocated pursuant to RCW 43.88 for operation of WSH?

4. Subsequent to the rulings identified in 1 through 3 above, the trial court denied Pierce County's motion for contempt and the Department's motion to amend or vacate the injunction. Regardless of the orders denying, the trial court nevertheless issued an order directing the Department to do "whatever is necessary" to comply with its injunction.

Error: The trial court erred by entering Paragraph 2 of its Order Re: Motion For Contempt, and its Order Re: Motion to Vacate/Amend Injunction both dated February 10, 2006.<sup>3</sup>

Issue: In the absence of any evidence of harm resulting from the Department's inability to "timely accept" patients, was it error for the court to order the Department to "do whatever is necessary" to comply with the injunction and decline to amend or vacate the injunction, knowing that the only real method of compliance was to open yet another ward at WSH, and that doing so would cause the Department to expend funds in

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<sup>3</sup> The Order Re Motion For Contempt is in the record at CP 4444-45. The Order Re: Motion to Vacate/Amend Injunction is in the record at CP 4446-47. Pursuant to RAP 10.4(c), a copy of these orders is in the Appendix at A-34 through A-37.

excess of those appropriated by the Legislature for the purpose of operating WSH?

5. The trial court invalidated the liquidated damages provisions found in WAC 388-865-0203 and the contracts.

Error: The trial court erred in entering Finding of Fact I.3, Conclusions of Law II.1-3, and an injunction in Part III in its October 7, 2005 summary judgment order Re: Liquidated Damages, and Finding of Fact III.B.7 and Conclusion of Law IV.B.1,3 of its Findings of Fact and Conclusions of Law, and Part B and D of its Judgment and Order both dated January 20, 2006.<sup>4</sup>

Issue: Did the trial court err in invalidating WAC 388-865-0203 and the liquidated damages provision of the contracts, where the Department had the authority to promulgate this regulation, the County voluntarily entered into contracts under which it agreed to an allocation of hospital beds, to pay liquidated damages if it failed to comply, and it suffered no financial loss because it was made whole by withholding the same amount from its subcontractors?

6. Subsequent to the entry of the trial court's orders, and the Defendants' notice of appeal, the Legislature enacted "retroactive,

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<sup>4</sup> The October 7, 2005 Order Granting Pierce County's Motion for Partial Summary Judgment On Liquidated Damages is in the record at CP 1855-1859. Pursuant to RAP 10.4(c), a copy of the order is in the Appendix at A-29 through A-33.

remedial [and] curative amendments” to RCW 71.24 and 71.05 providing *inter alia* that counties and their regional support networks “have no claim for declaratory relief, injunctive relief, judicial review under Chapter 34.05 RCW or civil liability against the state or state agencies for actions or inactions performed in the administration of [each] chapter with regard to (a) the allocation or payment of federal or state funds; (b) the use or allocation of state hospital beds; or (c) financial responsibility for the provision of inpatient mental health care.” Laws of 2006, ch. 333, §§ 103, 301. The trial court denied the motion.

Error: the trial court erred in entering its Order Denying Defendants’ Second Motion to Vacate dated August 25, 2006.<sup>5</sup>

Issue: Did the trial court err by failing to give effect to this legislation and declining to vacate the injunction, the operation of which directly affects either the “payment of federal or state funds, use or allocation of state hospital beds, or financial responsibility for the provision of inpatient care”?

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<sup>5</sup> The August 25, 2006 Order Re: Defendants’ Second Motion to Vacate was entered subsequent to the filing of the instant appeal, and was separately appealed in accordance with RAP 7.2(e). The appeal of this Order was consolidated with the instant appeal by order of this Court dated September 12, 2006. The order is in the record at CP 4453-54. Pursuant to RAP 10.4(c), a copy of the order is in the Appendix at A-38 through A-39.

### III. STATEMENT OF THE CASE

#### A. The parties.

Plaintiffs in this case are Pierce County, Pierce County Regional Support Network, and Pierce County Regional Support Network d/b/a Puget Sound Behavioral Health.<sup>6</sup> PCRSN is the unit of Pierce County government serving as the Regional Support Network. Pierce County owned and operated PSBH, which it purchased from a private owner in 2000. CP 254-59, 876. Because PCRSN and PSBH are units of Pierce County government, there is only one plaintiff entity—Pierce County. Therefore, all three plaintiffs will be referred to in this brief as either “Pierce County, the County, PCRSN or PSBH.”

Pursuant to RCW 71A.10.080, the other plaintiff is Washington Protection and Advocacy System (WPAS). Its participation in this lawsuit was limited to advocating on behalf of Pierce County residents. CP 29-30, ¶ 8. WPAS did not join in Pierce County’s motion for summary judgment regarding admission of long-term care patients. CP 61-62, 84. WPAS did not participate at trial and never sought a judicial determination that its constituents had actually been harmed because they were not “timely” admitted to WSH. *Id.*; CP 3606-10.

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<sup>6</sup> Through PSBH, Pierce County provided involuntary mental health care and treatment to PCRSN patients and other RSNs’ patients. Two months after the trial below had concluded, PSBH was closed by order of the state Department of Health. CP 2600-02, 2614-41. As a result, it had no ability to provide hospital care to any patients, and WSH assisted Pierce County in its moment of crisis. 2667-72.

The Department is the state agency charged with administering state and federal public assistance programs for low-income families, including Medicaid and state-funded community mental health programs. At the time of trial, Defendant MaryAnne Lindeblad was the Acting Director of the Department's Mental Health Division, and Defendant Andrew Phillips was Chief Executive Officer of Western State Hospital. Both Ms. Lindeblad and Dr. Phillips were sued only in their official capacity. The State of Washington is also a named defendant. Defendants are referred to collectively in this brief as either "the Department or the State."

**B. The public mental health system.**

The state of Washington primarily supports the adult public mental health system in two ways. First, the Department operates inpatient psychiatric facilities, such as Western State Hospital and Eastern State Hospital, which are statutorily mandated to serve the most acute and potentially long-term psychiatric patients. RCW 72.23.025. In operating WSH, the Department cannot expend funds in excess of legislative appropriation. RCW 43.88.130 ("No agency shall expend or contract to expend any money or incur any liability in excess of the amounts appropriated for that purpose[.]"); *see also* Const. art. VIII, § 4 ("No moneys shall ever be paid out of the treasury of this state, or any of its

funds, or any of the funds under its management, except in pursuance of an appropriation by law[.]”).

Secondly, the State provides mental health services through contracts between the Department and the RSNs (RSN contracts) that serve to distribute Medicaid and state-only funds in return for the RSNs provision of community inpatient and outpatient services to qualifying individuals. Pursuant to RCW 71.24.035(5)(e) and (15)(b), the RSN contracts take a standard form, are renewed on a biennial basis, and must be consistent with the resources appropriated by the Legislature.

The contracts require the RSNs to deliver Medicaid mental health services through a system of managed care, a prepaid health plan (PHP), which provides a package of mental health services to Medicaid clients upon request. Under this “capitated” system, the Department distributes appropriated funds as a fixed monthly payment for each Medicaid client in the RSNs’ designated area. In return for the monthly payment, the RSN/PHPs are required to provide the applicable and medically necessary mental health services to Medicaid clients. CP 672-75, 713-17, 1356-1426, 1427-1529, 1470-1514, 2030-37; Exs. 6, 7, 227. Under the same contract, RSNs also receive additional non-Medicaid (state-only) funds to provide an array of mental health services to non-Medicaid clients (*see*

RCW 71.24.035(5)(b); RCW 71.24.300(1) and (2)). CP 1356-92; 1427-1529; Ex. 226. (D0170001).

The Department determines in advance the distribution of public mental health funds appropriated by the Legislature and pays out the distribution on a monthly basis to the RSNs. In return for the monthly payment, the RSN/PHP is required to have the capacity to serve its mental health clients. For Medicaid clients, the RSN/PHP must provide all applicable and medically necessary services. For non-Medicaid clients, the RSNs are only required to provide services within the state funds allocated.<sup>7</sup> RSNs usually provide services through subcontracts with community providers.

Inpatient mental health care is an exception; hospitals licensed to provide such care bill the Department's Medicaid Management Information System (MMIS) directly, and payments made for such care are subsequently deducted from the monthly premiums through the "MMIS reconciliation" process. CP 2030-37; 3271-75; 4331 ¶ E. Ex. 6,

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<sup>7</sup> Prior to July 2005, the federal agency overseeing Medicaid, the Centers for Medicare and Medicaid Services (CMS), allowed publicly operated prepaid health plans to use Medicaid funds received as premiums in excess of the costs, i.e., Medicaid savings, to provide care to non-Medicaid recipients. However, that policy changed on July 1, 2005, and thereafter any such excess revenues from Medicaid payments could only be expended for services to eligible Medicaid recipients. CP 3077-78, ¶ 14; 3144-45; 4330, ¶¶ 1-4.

at 956-71 (Ex. M); Ex. 7, at 632-33, 740-41; Ex. 226 at D0170062-66 (Ex. D), D0170123 (Ex. K); Ex. 227 at D0170242-45 (Ex. D).<sup>8</sup>

The statutory scheme contemplates a state-wide but county-operated community mental health system, but the decision whether to create an RSN or to join with other counties in creating a multi-county RSN, is optional. RCW 71.24.035(4) and (14), RCW 71.24.045. The county may choose to not contract at all, in which case the Department assumes direct responsibility for all aspects of the county's public mental health system. *Id.* Importantly, however, if the RSN chooses to contract, each contract includes a provision allowing the RSN to withdraw at any time and for any reason, upon 90-day written notice. CP 637-38; 1423, ¶ 23; 1433, ¶ 26; Exs. 226, ¶ 25 (D0169980); 227, ¶ 25 (D0170153).

For the 2001-03, 2003-05 and 2005-07 biennia—the time periods covered by this lawsuit—Pierce County, through its RSN, signed contracts with the Department in accordance with the statutory schemes. Copies of the contracts and various excerpts can be found in multiple locations in the record. For ease of reference, this brief refers primarily to copies at Clerk's Papers 1356-92, 1393-1415, 1416-25, 1427-1529, or Exs. 6, 7, 226 or 227.

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<sup>8</sup> Even with the July 1, 2005 directive from CMS referenced in footnote 7, the federal agency did not direct the Department to discontinue the MMIS reconciliation process. CP 2046, ¶ 6; 3217-18, ¶¶ 11-13.

**C. RSN Responsibilities Under The Involuntary Treatment Act.**

Under the ITA, when there is an allegation that an individual either poses a risk of harm or is gravely disabled as a result of a mental disorder, the person is examined by a designated mental health professional (DMHP) employed by the RSN. RCW 71.05.150(1)(a), (c). If the DMHP investigates and concludes the allegations are true and the individual will not voluntarily seek treatment, the DMHP seeks an order detaining the person for up to 72 hours. RCW 71.05.150(1)(b).<sup>9</sup> Following a court hearing, the individual can be further detained for up to 14 days of involuntary treatment. RCW 71.05.230. The 72-hour and 14-day time frames are referred to as “short-term care.” At the time of trial, the RSNs were responsible for providing at least 85 percent of the short-term care needs within their community. RCW 71.24.300(6)(c).<sup>10</sup>

If involuntary care beyond 17 days is required, “the superior court shall remand him or her to the custody of the department” for an additional period of involuntary treatment “not to exceed ninety days from the date of judgment[.]” RCW 71.05.320. RCW 71.05.320 does not

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<sup>9</sup> If the DMHP determines there is an imminent risk of harm, the person may be immediately taken into custody without a court order for the 72-hour evaluation and treatment period. RCW 71.05.150(2). Thereafter the process for seeking additional detention for involuntary treatment is the same.

<sup>10</sup> The 2006 Legislature changed the percentage from 85% to 90%. Laws of 2006, ch. 333, § 106(6)(c).

impose a specific timeline for the person to be admitted to a certified long-term care facility or state hospital. The 90-day time frame and subsequent extensions are referred to as “long-term care.”

The ITA does not address one of the central issues in this case, i.e., who is responsible for involuntarily detained persons between the point of a 90-day commitment and actual admission to the state hospital, and who bears the costs of waiting patients.

**D. Pierce County Agreed To Administer the ITA, Operate Within The Funds Provided And Beds Allocated, And To Pay Liquidated Damages.**

Pierce County contractually agreed, in accordance with RCW 71.24.035(4), (14), and RCW 71.24.045, to administer the ITA and operate within the funds provided in the contracts, which the Department contends included absorbing the costs associated with providing care to long-term patients until the patient could be admitted to WSH. CP 623; 626; 628 ¶¶ 118-19; 633-35; 636-79; 1372, ¶ 2.2, .3; 1375, ¶ 2.4; 1385, ¶ 7.4; 1448, ¶ 2.2, .3; 1451, ¶ 2.3; 1460, ¶ 6.4; 2046-48, ¶¶ 9, 11. Moreover, it agreed to develop sufficient community resources and to keep the number of patients at WSH within the number allocated to it under WAC

388-865-0203.<sup>11</sup> CP 1376, ¶ 2.5.1; 1451, ¶ 2.4.1; Ex. 226, ¶ 2.3.2 (D0169991). It also agreed to pay liquidated damages if it did not comply with the bed allocation. CP 1390, ¶¶ 7.4.8.1(b), .2; 1465, ¶ 6.5.1.1, 6.5.2; Ex. 226, ¶ 8.4 (D0170002).

PCRSN frequently exceeded its bed allocation and used more hospital beds than other RSNs. CP 266-69, 724-58, 767, 827-75, 939-47, 1063-65, 1642-67, 2364-81. In state fiscal year 2005, PCRSN was allocated 69% more state hospital beds and utilized 84% more beds per general population as compared to the other 13 RSNs combined. CP 941-42, ¶ 5. Thus, PCRSN used almost twice the number of beds per 100,000 residents than its peer RSNs. *Id.*

On almost a daily basis in 2004, PCRSN was at least 10-30 patients over its bed allocation. CP 2366-73. PCRSN showed some improvement in 2005, but that trend reversed dramatically after September 9, 2005 when the trial court effectively relieved PCRSN of its obligation to manage its patient load. CP 1855-59, 1860-66.

Prior to the trial court's ruling on September 9, 2005, the Department assessed liquidated damages in the amount of \$1,082,435. CP 677; 718-19; 4328. PCRSN passed these liquidated damages on to its

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<sup>11</sup> The WAC was repealed following the adoption of Laws of 2006, ch. 333, as the legislature changed the manner in which hospital beds are allocated among the RSNs. Laws of 2006, ch. 333, § 107; RCW 71.24.310 *et seq.*

subcontractors, and the trial court acknowledged that PCRSN suffered no direct loss as a result of being assessed liquidated damages. CP 760; CP 4334, ¶ 3; Exs. 366-68.

Liquidated damages are a reasonable estimate of costs incurred when WSH has patients in excess of the legislatively-funded capacity. Liquidated damages are assessed according to WSH's "bed day rate," which was \$442.00 for state Fiscal Year 2006. CP 932. The "bed day rate" is based on actual costs at the hospital, and includes pharmacy expenses but does not include professional or ancillary fees, which would increase the amount by about \$37.00 per day. CP 931-34. The bed day rate is audited and approved by federal authorities, and is lower than any other inpatient psychiatric facility in Washington. CP 932-33, 938.

**E. Overcrowding At The Hospital Sometimes Results In An Admission Delay, But No Patient Suffered Harm.**

During the time period covered by this lawsuit, WSH had a funded and physical capacity for a finite number of patients. CP 934, ¶¶ 10-11; 944; 1645, ¶ 12. When the hospital was at physical capacity, and additional patients were committed for long-term care, Dr. Ira Klein, the hospital's medical director, considered a number of factors, including the incoming patient's diagnosis and mental status, the needs of other patients already in the hospital and the effect that exceeding capacity might have

on those patients, the relative priority of patients contending for the available space, whether the RSN was within their respective bed allocations, and whether any current WSH patients could be discharged. CP 12-24, 244-53, 594-608, 1642-50, 1697-1705, 2267-70, 2383-87. Based on these considerations, Dr. Klein exercised his medical judgment to make individualized determinations as to which patients should be admitted and when they would be admitted. *Id.*

Because PCRSN was routinely over its bed allocation, there were a number of instances when a short delay occurred between the date patients were committed and when they could be admitted to the hospital. CP 17-18, ¶ 19; 260-62; 901, ¶ 8; 1066-68. Depending on whose numbers are considered, the Department's or PCRSN's, the average waiting time for admission of a PCRSN long-term patient was only two to four days. *Id.*

There was no evidence that PCRSN or PSBH patients (or any other patients) were harmed as a result of any delay. To the contrary, evidence from PSBH's own medical and clinical directors demonstrates that there was no medical harm done to patients who had to wait to get into WSH, even if it is up to 30 days. CP 609-11, 613-617.

#### **F. Pierce County's Allegations.**

Pierce County filed this lawsuit in Pierce County Superior Court on November 20, 2002, seeking damages and a writ of mandamus based

on a number of legal theories. *See* Pierce County Superior Court Cause No. 02-2-13250-8. Because at least one claim was based on federal law, the State removed the case pursuant to 28 U.S.C. § 1441(b). The United States District Court for the Western District of Washington granted the State's motion under Fed. R. Civ. P. (FRCP) 12(c) and dismissed the federal claims. *See* U.S.D.C. W.D. Wash. Cause No. C02-5663RBL. The federal court remanded the state law claims to state court. *Id.*

The parties stipulated to a change of venue to Thurston County. CP 1431, ¶ 13. The Washington Advocacy and Protection System (WPAS) was added as a plaintiff, but only on behalf of Pierce County residents. CP 29-30, ¶ 8.

The case ultimately proceeded on a Fourth Amended Complaint, filed July 20, 2005, with twelve different claims, including:

- Failure to provide “adequate care and individualized treatment” to long-term care patients under RCW 71.05.320 by refusing to admit them immediately following commitment, by providing insufficient funding for community and residential services, failing to provide adequate discharge plans. CP 43-44, ¶¶ 74-75;<sup>12</sup>
- Violation of the constitutional rights of WPAS' long-term care constituents by failing to provide “adequate care and treatment”,

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<sup>12</sup> WPAS never pursued the claim relating to “failure to immediately admit” on behalf of its constituents, which are legally distinct claims from Pierce County's. *See, supra* at 9; *infra* FN 32. The assertion is among the more curious aspects of this lawsuit. The discharge claim was resolved when WSH agreed to adopt a written discharge policy. CP 1136-38.

and that these violations “caused and will continue to cause damage”. CP 44, ¶¶ 76-77;<sup>13</sup>

- Failure to admit long-term care patients in a timely manner constituted “other agency action” under RCW 34.05.570(4) as to Pierce County, which “unjustly enriched” the State. CP 45, ¶ 83;
- Failure to make short-term care beds available at WSH, constituted “other agency action” reviewable under RCW 34.05.570(4). CP 46-47, ¶¶ 87-88;
- Failure to provide adequate funding for community and residential services constituted other agency action reviewable under RCW 34.05.570(4). CP 47, ¶ 89;
- Violation of RCW 43.135.060(1) by not providing adequate funding under the ITA. CP 47-48, ¶ 92;<sup>14</sup>
- Lack of authority to adopt WAC 388-865-0203 and the liquidated damages contract provisions are illegal (CP 48, ¶ 95; 49, ¶ 99) or, in the alternative, failure to recalculate the allocation as required by WAC 388-865-0203(e). CP 49-50, ¶ 100;<sup>15</sup>
- Violation of the single-bed certification regulation under former WAC 388-865-0526. CP 50, ¶¶ 101-103;<sup>16</sup>
- Contracting process for PCRSN services violated RCW 71.24, thus the contracts are illegal and void. CP 50-52, ¶¶ 104-108;

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<sup>13</sup> All of WPAS’ substantive due process claims were voluntarily dismissed. CP 4323, ¶ B.

<sup>14</sup> The County has no obligation under the ITA other than those that it voluntarily assumed by signing the RSN contracts, which it had no obligation to do. RCW 71.24.035(4), (14); RCW 71.24.045. Moreover, the County could have withdrawn from the contracts upon 90-days notice. CP 1423, ¶ 23; 1433, ¶ 26; Exs. 226, ¶ 25 (D0169980); 227, ¶ 25 (D0170153). Thus, there was no mandate, funded or not. Pierce County voluntarily dismissed its unfunded mandate claim. CP 4324, ¶ F.

<sup>15</sup> The trial court ruled that the provision of the rule authorizing withholding of liquidated damages was invalid. The County’s alternative claim was dismissed. CP 4324, ¶ H.

<sup>16</sup> This claim was resolved by the parties. CP 4324, ¶ I.

- Distribution of appropriated funds violated Art. II, §§ 19 and 37, and the funding allocation rule (former WAC 388-865-0201) was arbitrary and capricious, and invalid. CP 54, ¶¶ 115-118; and
- The PCRSN contracts violated Federal Medicaid law and policy. CP 55, ¶ 120.

**G. The Trial Court’s Summary Judgment Orders Narrowed The Issues For Trial.**

The trial court ruled on a number of partial summary judgment motions, substantially narrowing the issues for trial. The summary judgment rulings set the stage for many of the issues in this appeal.

**1. Orders relating to liquidated damages and long-term care patients.**

The court’s pretrial orders were incorporated into the final decision. Pertinent to this appeal, the trial court ruled as follows:

1. The liquidated damages provision of WAC 388-865-0203 was invalid. CP 1857-59; 4327, ¶ 7.<sup>17</sup>
2. The Department exceeded its authority by including the liquidated damages provisions of WAC 388-865-0203 in the contracts. CP 1857-59, 4334.
3. Even though Pierce County passed along liquidated damages to its subcontractors, and as a result “neither [it] nor their providers suffered a loss from withholding liquidated damages”, the County was entitled to a refund of all liquidated damages, because “the State should in no way benefit from wrongfully withholding the liquidated damages”. CP 4334, ¶ 3.

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<sup>17</sup> The trial specifically declined to invalidate the bed allocation portion of the rule. RP (Sept. 9, 2005 re: Liquidated Damages) at 4.

4. Enjoining further application of the liquidated damages provision. CP 1857; 4341, ¶ D.<sup>18</sup>
5. Concluding the failure to admit PCRSN patients under RCW 71.05.320 in a timely manner because of census-related issues, was agency action reviewable under RCW 34.05.570(4). CP 1861, ¶ II.1; 4333-34.
6. Ordering the Department to reimburse Pierce County for the costs of caring for patients described in Paragraph 5 above, under a “quasi-contract or breach of contract claim.” CP 4333, ¶¶ 2-3.

In addition, the court granted the Department summary judgment dismissing the County’s claim regarding the funding allocation rule, but deferred the Department’s motion regarding the County’s Medicaid contract claims until it could hear further trial testimony. CP 3146-47. The trial court also denied the County’s request for interest to be applied to the monetary awards. CP 4333, ¶ 6; 4334, ¶ 2; RP (Jan. 20, 2006) at 22;<sup>19</sup> *see also* RCW 39.76.020(1).

## **2. The trial court’s injunction**

On September 9, 2005, the trial court enjoined the Department from “declining to timely accept” adult PCRSN and PSBH patients civilly

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<sup>18</sup> Because the WAC has subsequently been repealed, and the current contract does not include a liquidated damages clause, this aspect of the trial court’s ruling is moot.

<sup>19</sup> Because many of the issues in this appeal were resolved on summary judgment, much of the Report of Proceedings consists of transcripts of these hearings. They are cited in this brief by date and, when more than one issue was addressed on the same date, by subject matter.

committed for long-term care. RP (Sept. 9, 2005 re: Long-Term Care Patients). This oral ruling was confirmed by written order on October 7, 2005. CP 1860-66. An admission would be “timely” if it occurred within “a reasonable time” after the patient was committed and transportation was available, but no later than the day following entry of the commitment order.<sup>20</sup> CP 1863, ¶ 1a; 4340, ¶ C(1).

It was undisputed that (1) no patients had been harmed as a result of any delay in admission to WSH; (2) WSH could not accept patients beyond its then-current capacity without endangering the health and safety of both current and incoming patients, as well as jeopardizing its accreditation; and (3) opening additional wards to accommodate increased admissions would require expenditure of funds beyond those appropriated for operation of the hospital. Recognizing that the order required WSH to open another ward—and hoping that the Legislature would eventually provide the needed funding—the trial court delayed the effectiveness of its injunction ruling for ninety days or December 9, 2005. CP 1864, ¶ 2.

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<sup>20</sup> The trial court’s ruling did allow for an exception if there were “factors other than WSH’s census that make it medically inappropriate or unsafe to accept the patient.” CP 1863. However, the court transferred responsibility to the Department to find a suitable location for patients fitting this exception, even though the individual would not be a WSH patient, and only the County would have both “medical custody” of the patient and the medically-related information necessary to find a suitable location.

#### **H. The County Sought Contempt Sanctions.**

Shortly after the September 9, 2005 oral ruling, the number of PCRSN patients on the waiting list began to increase markedly, resulting in WSH once again reaching capacity almost as soon as the new ward was opened, and PCRSN patients again faced short delays. CP 2278-80, 2383-88; RP (Jan. 6, 2006) at 48. On December 29, 2005, Pierce County filed a motion for contempt alleging that it was entitled to all of the 29 new beds made available after WSH opened the new ward on December 9, 2005. *Id.* At that time, Pierce County was 40-45 patients over its bed allocation. CP 2383-88; RP (Jan. 6, 2006) at 48. The contempt motion did not show any emergency relating to PCRSN patients not being “timely admitted” to WSH, and most of the County’s waiting patients were admitted within a matter of a few days.

When presented with the evidence of the County’s increased use of WSH beds, the trial court found that the Department had proceeded “in good faith,” and denied contempt. CP 4445; RP (Jan. 6, 2006) at 50. However, the court effectively ordered that the Department to open yet another new ward. CP 2383-88, 4444-47; RP (Jan. 6, 2006) at 48-51. The court ordered: “Defendants’ [sic] are required to do whatever is necessary” to comply with the injunction, and “if the solution is to open an additional ward, the Defendants shall have 90 days from January 6, 2006 to open the

ward to comply.” CP 4445. The court’s oral ruling was more direct, specifically requiring the Department to open an additional ward. RP (Jan. 6, 2006) at 48.

**I. Remaining Issues Were Resolved At Trial.**

The disputed claims considered at trial included:

- the amount of restitution for liquidated damages and costs of caring for long-term care patients waiting admission to WSH.
- contracting procedures violated state law. CP 4325, ¶ 3, (Claim J in the Fourth Amended Complaint).
- 2001-03 and 2003-05 contracts were unlawful in requiring expenditure of Medicaid funds (Medicaid savings) for persons who were not Medicaid eligible (non-Medicaid). CP 55 (Claim L in Fourth Amended Complaint).
- Department should not be allowed to collect or reconcile past PSBH inpatient expenditures. CP 3281-83; CP 4326, ¶¶ 4, 5.

The court rejected the County’s remaining claims, and determined the amount of damages due as reimbursement of liquidated damages and the costs of caring for patients waiting for admission to WSH. CP 4327, 4333.

The Department’s post-trial motion to vacate or amend the injunction was denied (CP 4447) and the orders described above were incorporated into a final Findings of Fact and Conclusions of Law, and a separate Judgment and Order, both of which were entered on January 23,

2006. CP 4322-42. A timely notice of appeal was filed by the State on February 21, 2006. CP 2688-2715.

**J. The Legislature Reacts To The Trial Court's Rulings.**

The 2006 Washington Legislature enacted Chapter 333, Laws of 2006, finding previous ambiguities regarding the responsibilities of the Department and RSNs under RCW 71.05 and 71.24, and enacted “retroactive, remedial, curative, and technical amendments” to several pertinent statutes. Laws of 2006, ch. 333, § 101. The legislation clarified the intent underlying the Community Mental Health Act, RCW 71.24:

In enacting the community mental health services act, the legislature intended the relationship between the state and the regional support networks to be governed solely by the terms of the regional support network contracts and did not intend these relationships to create statutory causes of action not expressly provided for in the contracts. Therefore, the legislature's intent is that, except to the extent expressly provided in contracts entered after the effective date of this section, the department of social and health services and regional support networks shall resolve *existing and future disagreements* regarding the subject matter identified in sections 103 and 301 of this act *through nonjudicial means*.

Laws of 2006, ch. 333, § 101(2) (emphasis added).

The Legislature added the following language to RCW 71.05 and 71.24:

(1) Except for monetary damage claims which have been reduced to final judgment by a superior court, this section applies to all claims against the state, state agencies, state officials, or state employees that exist on or arise after the

effective date of this section.

(2) Except as expressly provided in contracts entered into between the department and the regional support networks after the effective date of this section, the entities identified in subsection (3) of this section shall have no claim for declaratory relief, injunctive relief, judicial review under chapter 34.05 RCW, or civil liability against the state or state agencies for actions or inactions performed pursuant to the administration of this chapter with regard to the following: (a) The allocation or payment of federal or state funds; (b) the use or allocation of state hospital beds; or (c) financial responsibility for the provision of inpatient mental health care.

(3) This section applies to counties, regional support networks, and entities which contract to provide regional support network services and their subcontractors, agents, or employees.

*See* Laws of 2006, ch. 333, §§ 103 and 301.

Subsequently, the State filed a second post-judgment motion asking the trial court to vacate the injunction. CP 3300-89. The court denied the motion on August 25, 2006. CP 4453-54. A timely notice of appeal of this order was filed on August 29, 2006, and both appeals were consolidated under Cause No. 34423-8-II by order of this Court dated September 12, 2006.

#### **IV. STANDARD OF REVIEW**

Absent disputed facts, the legal effect of a contract is a question of law that this court reviews de novo. *Yeats v. Estate of Yeats*, 90 Wn.2d 201, 204, 580 P.2d 617 (1978). Disputed findings of fact are reviewed under the substantial evidence test, “defined as a quantum of evidence

sufficient to persuade a rational, fair-minded person that the premise is true.” *Sunnyside Valley Irrig. Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003) (citing *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000)). “If the standard is satisfied, a reviewing court will not substitute its judgment...even though it might have resolved a factual dispute differently.” *Sunnyside Valley*, 149 Wn.2d at 879-80 (citing *Croton Chem. Corp. v. Birkenwald, Inc.*, 50 Wn.2d 684, 314 P.2d 622 (1957)). Questions and conclusions of law are reviewed de novo. *Sunnyside Valley*, 149 Wn.2d at 879 (citing *Veach v. Culp*, 92 Wn.2d 570, 573, 599 P.2d 526 (1979)).

The Administrative Procedures Act (APA) does not expressly authorize summary judgments, but case law establishes that summary proceedings may be employed. *See Eastlake Cmty. Coun. v. City of Seattle*, 64 Wn. App. 273, 276, 823 P.2d 1132, review denied, 119 Wn.2d 1005, 832 P.2d 488 (1992). On review of a summary judgment order, the appellate court performs the same inquiry as the trial court. *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 860, 93 P.3d 108 (2004). The standard of review is de novo and all facts are considered in the light most favorable to the nonmoving party. CR 56; *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005).

In reviewing an administrative action, the appellate court sits in the same position as the trial court and applies the APA standards directly to the agency's administrative record. *Superior Asphalt & Concrete Co. v. Dep't of Labor & Indus.*, 112 Wn. App. 291, 296, 49 P.3d 135 (2002) (citing *Tapper v. Empl. Sec. Dep't*, 122 Wn.2d 397, 402, 858 P.2d 494 (1993)), *review denied*, 149 Wn.2d 1003, 70 P.3d 964 (2003).

The burden of demonstrating the invalidity of a rule or agency action is on the party asserting invalidity. RCW 34.05.570(1)(a). *Washington Indep. Tel. Ass'n v. Utils. & Transp. Comm'n*, 148 Wn.2d 887, 903, 64 P.3d 606 (2003). "Administrative rules adopted pursuant to a legislative grant of authority are presumed to be valid and should be upheld on judicial review if they are reasonably consistent with the statute being implemented." *Campbell v. Dep't of Soc. & Health Servs.*, 150 Wn.2d 881, 892, 83 P.3d 999 (2004). "However, an agency rule will be declared invalid if it exceeds the statutory authority of the agency." *Campbell*, 150 Wn.2d at 892; *see also* RCW 34.05.570(2)(c).

RCW 34.05.570 sets forth nine grounds on which a party may challenge "other agency actions," two of which pertain here. First, RCW 34.05.570(2)(c), applicable to the Department's actions in adopting WAC 388-865-0203, provides: "In a proceeding involving review of a

rule, the court shall declare the rule invalid only if it finds that ... the rule exceeds the statutory authority of the agency ... or the rule is arbitrary and capricious." Second, RCW 34.05.570(4) (other agency action), provides for (1) a challenge to "an agency's failure to perform a duty required by law," RCW 34.05.570(4)(b), that violates a party's rights; and (2) relief only if the agency's action was "[a]rbitrary or capricious" or "[o]utside the statutory authority of the agency or the authority conferred by a provision of law." RCW 34.05.570(4)(c)(ii), (4)(c)(iii).

The validity of WAC 388-865-0203 and whether RCW 71.05.320 requires immediate acceptance of a long-term patient, are questions of law that this Court reviews de novo. *Littleton v. Whatcom Cy.*, 121 Wn. App. 108, 117, 86 P.3d 1253 (2004); *Ass'n of Wash. Bus. v. Dep't of Rev.*, 121 Wn. App. 766, 770, 90 P.3d 1128 (2004).

## **V. SUMMARY OF ARGUMENT**

Washington's public mental health system requires the Department and the RSNs to work in a collaborative manner in caring for the seriously mentally ill. The Legislature's primary goal is to treat the mentally ill within the community and not in institutionalized settings. CP 13-14, ¶¶ 4-7. The system is designed to balance the responsibilities of the 14 RSN

and the state hospitals.<sup>21</sup> *Id.* The RSNs are the primary gatekeepers, as through their staff and subcontractors, they control when to seek court orders committing individuals for long-term care. *Id.* Not only do the RSNs generally control the front door to the state hospitals, they also control the back door as they are responsible for establishing and finding suitable community placements for state hospital patients ready for discharge. CP 14-15, 1697-1705.

Recognizing the important role that RSNs have in this delicate system, the Legislature redistributed funds historically appropriated to the state hospitals, to the RSNs in order to build greater capacity in the community. In 2001, the Legislature called for reducing the state hospital census by “arranging and providing for community residential, mental health, and other support services for long-term state hospital patients whose treatment needs constitute substantial barriers to community placement and who no longer require active psychiatric treatment at an inpatient hospital level of care, no longer meet the criteria for inpatient involuntary commitment, and who are clinically ready for discharge from a state psychiatric hospital.” Laws of 2001, 2d Ex. Sess., ch. 7, §

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<sup>21</sup> Counties have the option of declining to participate in the system, in which case the Secretary is designated to perform the duties that would otherwise be the responsibility of an RSN. RCW 71.24.035(4).

204(2)(c); and Laws of 2002, ch. 372, § 204(2)(c)<sup>22</sup>; *see also* CP 12-24, 680-682, 939-47, 1325-52.

The trial court's order requiring the Department to "timely accept" long-term care patients, invalidating liquidated damages, and directing restitution of long-term care costs and liquidated damages, substantially disrupted the delicate balance created by the Legislature, disregarded patient safety, eliminated properly imposed incentives on Pierce County to honor its statutory, regulatory and contractual obligations, disregarded express contracts, and exceeded the court's authority.

## **VI. ARGUMENT**

### **A. The ITA Does Not Create A Legal Duty for WSH To Immediately Admit Long-term Patients.**

The court erred in its interpretation of RCW 71.05.320 and the contracts, by issuing an injunction requiring immediate acceptance of

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<sup>22</sup> For instance, the 2001-2003 biennial budget allocated \$732 million for community services to the RSNs, of which \$385,973,000 were state funds, \$337 million for institutional services, of which \$169 million were state funds, and \$42.5 million for civil commitment services. Laws of 2001, 2d Ex. Sess., ch. 7, § 204. The 2003-2005 biennial budget allocated \$808 million for community services to the RSNs, of which \$421,315,000 were state funds, almost \$350 million for institutional services, of which \$187 million were state funds, and an additional \$60 million for civil commitment services. Laws of 2003, 1st Ex. Sess., ch. 25, § 204. The 2005-2007 biennial budget allocated \$869.4 million for community services to the RSNs, of which \$540.6 million were state funds, \$390 million for institutional services, of which \$215 million were state funds, and almost \$90 million in state-only funds for civil commitment services. Laws of 2005, ch. 515, § 204.

patients. The resulting injunction should be reversed because it was premised on legal error and because it contradicts legislative intent.

**1. The trial court erred by interpreting RCW 71.05.320 to impose a time limit by which WSH has to admit long-term patients.**

The statutory provision at issue provides in pertinent part:  
The court shall remand [patients committed for additional treatment periods of up to 90 days] to the custody of the department or to a facility certified for ninety day treatment by the department for a further period of intensive treatment. . . .

RCW 71.05.320(1).

This provision does not create a legal duty on the Department or WSH to accept within a “timely” period persons committed for long-term care.<sup>23</sup> In neither RCW 71.05 nor 71.24 is there language specifically requiring admission of long-term care patients by a certain time. The

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<sup>23</sup> Initially the trial court agreed. Early in the case, the County sought a writ of mandamus, and in denying its request, the trial court opined about RCW 71.05.320:

It seems to me that the statute does not, specifically, say that the Hospital must take custody; and it does not, specifically, say that the intensive 90-day treatment program must begin on the date of the court order. But we know that the date of the court order is the day we begin counting when 90 days expire, and the person is entitled to relief or other remedies under the Involuntary Treatment Act.

....

Those questions of fact that would be developed at a trial would be whether, based on the particular facts, it has been appropriate for WSH to delay admission of the particular patients that the Petitioners are talking about here in light of the actual hospital population on those days.

CP 76.

statute is better interpreted to require the public mental health system, i.e., WSH, the RSNs, and then the Department, to make the arrangements and adjustments necessary to provide a safe environment for all patients. CP 12-24, 244-53, 248-49, 594-608, 1642-50, 1697-1705, 2267-70, 2383-87. Nothing in the text of the statute supports the imposition of an arbitrary time frame for admission to WSH, especially a time frame divorced from the realities of safety and other issues created by the census pressures at WSH. In effect, the trial court imposed a new legislative scheme that goes beyond the statutory language and deprives WSH of the medical discretion that must be exercised to ensure the safety and adequate care of all patients needing admission.

The trial court's interpretation is also flawed because it eliminates the incentives for RSNs to develop community services and resources directed at keeping people out of long-term hospitalization, contrary to the legislative scheme. Indeed, if applied state-wide, it could have just the opposite effect, as RSNs would have financial and other incentives to transfer patients, and responsibility to WSH at the earliest opportunity,

regardless of whether immediate admission was in a patient's best interest.<sup>24</sup>

Pierce County's actions illustrate this point. Between September 8, 2005 (the day before the injunction ruling) and December 21, 2005 (ten days following the new ward's opening), PCRSN went from having seven patients waiting for admission to 19. CP 2267-70, 2364-81. During this same period (and reflecting the court's order that PCRSN long-term care patients be given priority to available beds), PCRSN went from being eight patients over its bed allocation to more than 36 patients over. *Id.* RP (Sept. 30, 2005) at 47. By December 29, 2005, PCRSN was 42 patients over its allocation. CP 2381.

After WSH opened the new ward on December 9, 2005, not only was PCRSN more than 30 patients over its allocation, but there were 40 PCRSN patients ready to be discharged from WSH that could not be discharged because the County had not met its contractual and statutory obligations to find community placements. CP 2268. Apparently, the trial court's oral ruling caused PCRSN to discontinue its recently-instituted successful efforts to divert patients away from long-term care and into

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<sup>24</sup> For those patients who are stabilizing faster than the statutory 90-day period, there is a process for keeping them closer to home rather than being transferred to WSH. It is referred to as the "single bed certification" process, and allows an RSN to request temporary certification as a "long-term care facility" for up to 30 days. WAC 388-865-0526.

community-based care. CP 781-85, 1647-49, 2364-81. It also shows a significant decrease in its discharge efforts.

In short, the trial court's interpretation of the statute is not based on the language of the statute and directly frustrates the Legislature's primary goal of having the RSNs treat most mentally ill persons in the community rather than transferring responsibility to the state hospitals.

**a. The cases relied on by Pierce County do not support its interpretation of RCW 71.05.320.**

Pierce County relied heavily on the 1982 decision in *Pierce County v. Western State Hospital*, 97 Wn.2d 264, 644 P.2d 131 (1982) (*Pierce County I*), for the proposition that WSH was required to admit long-term patients immediately. CP 69. In *Pierce County I*, the Supreme Court applied RCW 71.05.170, as it then read, to require WSH to immediately accept patients who were on a 72-hour hold because they posed a danger to self or others. The language of RCW 71.05.170 at issue in *Pierce County I*, contrasts starkly with the language of RCW 71.05.320. In 1982, RCW 71.05.170 read as follows:

Whenever the county designated mental health professional petitions for detention of a person whose actions constitute a likelihood of serious harm, or who is gravely disabled, the facility providing seventy-two hour evaluation and treatment *must immediately accept* on a provisional basis the petition and the person.

RCW 71.05.170 (emphasis added)<sup>25</sup>; *Pierce County I*, 97 Wn.2d at 266. This Court held that the “must immediately accept” language of RCW 71.05.170 imposed an obligation to accept immediately any patient who had been detained on a 72-hour hold—the time frame in which the patient is usually the most critically mentally ill. *Pierce County I* does not support the trial court’s interpretation, because RCW 71.05.320 does not have the same mandatory, duty-creating, or time-setting language.<sup>26</sup>

Pierce County also relied on *In re Detention of W*, 70 Wn. App. 279, 852 P.2d 1134 (1993). The *In re W* court held that under the “court shall remand” language of the statute, a superior court does not have discretion to remand a patient to a facility not certified for 90-day treatment. *In re W* does not address the timing of a transfer to the state hospital—indeed *In re W* stands for the proposition that the Department, not the RSN or the court, has the discretion to choose an appropriate

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<sup>25</sup> This provision is substantially the same today but has been amended to clarify that the state psychiatric hospitals’ duties are limited by the provisions of RCW 71.24, the community mental health statute. See Laws of 1989, ch. 205, § 10. Under current law the County is responsible for evaluation and treatment services for 90% of its short-term patients. RCW 71.24.300(6)(c), as amended by Laws of 2006, ch. 333.

<sup>26</sup> In addition, the language in RCW 71.05.320, unlike the language in RCW 71.05.170, directs the court, not WSH, to take action. As discussed below, WSH retains the discretion to achieve a result that is consistent with the Medical Director’s professional judgment as to safety for all patients and legislative intent.

facility for a long-term patient, given all the attendant circumstances in a particular case.<sup>27</sup>

Both of the County's primary cases were decided based on the plain meaning of a single statutory provision. Recently, the Washington Supreme Court counseled that the better approach is to not consider statutory language in isolation, but rather in the context of "all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." *State ex rel Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 2, 11, 43 P.3d 4 (2002). The Court noted that "this formulation of the plain meaning rule provides the better approach because it is more likely to carry out legislative intent." *Id.* at 11-12.

Nor can the trial court's interpretation be pinned to the word "shall." Washington courts have consistently recognized that the word "shall" as used in RCW 71.05.320 should be interpreted as directory, rather than mandatory, when the intent of the Legislature would be frustrated by a literal reading. *Spokane County ex rel. Sullivan v. Glover*, 2 Wn.2d 162, 169-70, 97 P.2d 628 (1940). When determining whether

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<sup>27</sup>Unlike the instant case, *In re W* was not a challenge to allegedly unlawful agency action under the APA. The action was as a challenge to a particular civil commitment order, brought in the court with jurisdiction to review that order. Similarly, any person committed to WSH for treatment who does not receive such treatment within a reasonable period of time can seek relief from the committing court.

“shall” is directory or mandatory, courts look to all terms of the act as they relate to the subject legislation, the nature of the act, the general object to be accomplished, and the consequences resulting from construing the statute in one way or another. *Spokane County*, 2 Wn.2d at 169.<sup>28</sup>

If RCW 71.05.320 is read in harmony with other legislative priorities, it cannot support the injunction imposed by the trial court. *In re W* and *Pierce County* I offer no support for a contrary result frustrating the overall legislative intent of the ITA, RCW 71.05 and the Community Mental Health Act, RCW 71.24.

**b. RCW 71.05.320 must be harmonized with other legislative policies regarding the public mental health system.**

The mental health system has changed dramatically since the 1982 *Pierce County* I decision. At that time, the public mental health system primarily focused on the involuntary institutional care system, RCW 71.05. Now, however, there are *two*, not *one*, major statutory schemes governing the public mental health system, and they must be read together. RCW Chapter 71.05 governs involuntary treatment but essentially incorporates by reference RCW 71.24, which addresses

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<sup>28</sup> The *Pierce County* I court also recognized that use of the word “shall” does not always vitiate any element of judicial discretion. See *Pierce County* I, 97 Wn.2d at 270, (distinguishing RCW 71.05.170 which said the “facility *must*” immediately accept detainees, from a statute that used the word “*shall*”).

community mental health services. In particular, RCW 71.05.025 states: “The legislature intends that the procedures and services authorized in this chapter be integrated with those in chapter 71.24 to the maximum extent necessary to assure a continuum of care to persons who are mentally ill or who have mental disorders. . . .”

In addition, RCW 72.23 provides guidance on the legislative intent for service delivery. In 1989, the Legislature expressed its intent that “eastern and western state hospitals shall become clinical centers for handling the most complicated long-term needs of patients with a primary diagnosis of mental disorder. Over the next six years, their involvement in providing short-term, acute care, and less complicated long-term care shall be diminished in accordance with the revised responsibilities for mental health care under RCW 71.24.” RCW 72.23.025(1). Hence, patients who no longer need long-term care should be discharged back into the community, and PCRSN has contractual obligations in this regard. CP 1452, ¶ 2.4.5 - .7; 1376, ¶ 2.5.6 - .7; 1697-1705.

Simply put, the state hospitals’ responsibility for accepting long-term patients is not absolute in light of the Legislature’s intent to encourage full use of all existing resources and, to the maximum extent appropriate, provide treatment in the community. RCW 71.05.010. The Legislature specifically called for reducing the state hospital census by

...arranging and providing community residential, mental health, and other support services for long-term state hospital patients whose treatment needs constitute substantial barriers to community placement and who no longer require active psychiatric treatment at an inpatient hospital level of care, no longer meet the criteria for inpatient involuntary commitment, and who are clinically ready for discharge from a state psychiatric hospital.

Laws of 2001, 2d Ex. Sess., ch. 7, § 204(2)(c); and Laws of 2002, ch. 371, § 20-4(2)(c). The Legislature is also concerned about quality of care and overcrowding at the state hospitals. RCW 72.23.025.

Between 2002 and 2005, the Legislature appropriated some of the funds saved by closing wards at WSH to support further development of community resources. CP 1325-52. Several community funding programs were created including the Expanded Community Services (ECS), and the Community Based Care (CBC) programs. CP 1325, ¶ 3; 1329; 1339, ¶ 5; 1345-52.

Most importantly, the Legislature expressed its intent that “the procedures and services authorized in RCW 71.05 and those in RCW 71.24 shall be integrated to the extent possible to assure a continuum of care.” RCW 71.05.025. Thus, the Department’s and the County’s obligations are intertwined pursuant to statute and contract, but at all times, the Department has been delegated the authority to achieve this

integration through the promulgation of rules and through contracts with the RSNs. RCW 71.24.035(2), (5)(m).

The trial court erred by interpreting RCW 71.05.320 in isolation, rather than in the context of the entire public mental health system intended by the Legislature.

**c. No provision of the contract suggests the Department is responsible for long-term patients until they are actually admitted to WSH.**

The Department never contested that it is financially responsible for patients once they are actually admitted to WSH.<sup>29</sup> The Department intended for the contracts to require PCRSN to pay the associated costs of caring for long-term patients out of the funds distributed, until such time as the patient could be admitted to WSH. CP 623-35, 1356-92, 1427-67; 2046-48, ¶¶ 9, 11. Most importantly, neither RCW 71.05.320 nor any other statute, nor the contracts explicitly or implicitly require the Department to immediately admit long-term care patients or assume the costs before the patient is admitted.

Significantly, neither Pierce County nor the trial court identified any language in the contracts providing that the Department has such responsibility before a patient is actually admitted. In fact, just the

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<sup>29</sup> Ultimate financial responsibility lies with the patient who is receiving treatment, depending upon the resources available to the patient. RCW 43.20B.020, .060; WAC 388-855 (liability for the cost hospital care).

opposite is true. CP 1356-92, 1416-25, 1427-67; Exs. 6, 7, 226, 227. The working agreement between the parties also does not require WSH to admit a patient within a certain period of time or assume costs associated with waiting patients. *Id.* CP 1453, ¶ 2.4.9; 1697-1705. However, under the working agreement, PCRSN is equally responsible for finding a placement for WSH/PCRSN patients who are ready to be discharged. CP 15, ¶ 9; 1644, ¶ 9; 1645, ¶ 10.

As negotiated between the parties and as required by RCW 71.24.035(5)(e) and (15)(b), the contracts require the County to be fully responsible for initiating the ITA process. CP 1361-75, 1440-51; Exs. 6-7, 226-27. These provisions unmistakably make it the County's obligation to care for patients until they are actually admitted to the hospital for long-term care, and to absorb the associated costs for waiting patients. Similarly, the Department has to absorb the costs for PCRSN patients ready for discharge from WSH, and who cannot be discharged because Pierce County has not adequately developed its community-based system or cooperated with the discharge process. CP 15, ¶ 9; 1644, ¶ 9; 1645, ¶ 10; 1697-1705; 2268, ¶ 8.

**d. Pierce County had an adequate remedy at law and did not satisfy the requirements supporting an injunction.**

Pierce County did not carry the burden necessary to justify injunctive relief:

[O]ne who seeks relief by temporary or permanent injunction must show (1) that he has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury to him.

*Kucera v. Dep't of Transp.*, 140 Wn.2d 200, 209, 995 P.2d 63 (2000), quoting *Tyler Pipe Indus., Inc. v. Dep't of Rev.*, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982). Harm is not irreparable if there is an adequate remedy at law. *Id.* at 212-13. The court must balance the interests of the parties and the public, and only if the interests tip in favor of the moving party should an injunction be issued. *Id.* at 221. Pierce County failed to meet any of these conditions.<sup>30</sup>

Moreover, except as necessary to correct constitutional violations, the separation of powers doctrine limits a court's ability to direct a state agency to make expenditures beyond the funds appropriated by the

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<sup>30</sup> The County sought relief under the APA. CP 45, ¶ 83. The trial court's injunction was issued pursuant to RCW 34.05.574(1), which provides that a court finding "other agency action" to be invalid "may . . . enjoin or stay the agency action . . .", rather than under RCW 7.40, the general statute governing injunctions. However, there is nothing in the language or legislative history that APA-based injunctions are not subject to the same considerations governing injunctions generally.

Legislature. *Braam v. State*, 150 Wn.2d 689, 710, 81 P.3d 851 (2003); *Hillis v. Dep't of Ecology*, 131 Wn.2d 373, 389, 932 P.2d 139 (1997). The trial court's injunction was premised on its holding that RCW 71.05.320 requires the Department to accept long-term care patients regardless of the hospital's bed capacity or how exceeding that capacity might affect patient safety. The premise also formed the basis that the Department is required to reimburse PCRSN for the costs of caring for such patients prior to the time they are actually admitted. As shown above, the statute and contracts impose no such obligation, and both rulings should be reversed.

However, even if the trial court was correct as to financial responsibility, the injunction requiring immediate admission was error. The County would arguably have an adequate remedy at law for any damages incurred as a result of WSH's decisions to not immediately admit PCRSN patients. Injunctive relief is not appropriate where there is an adequate remedy at law:

An injunction is distinctly an equitable remedy and is "frequently termed 'the strong arm of equity,' or a 'transcendent or extraordinary remedy,' and is a remedy which should not be lightly indulged in, but should be used sparingly and only in a clear and plain case." 42 Am. Jur. 2d Injunctions § 2, at 728 (1969) (footnotes omitted). *Accordingly, injunctive relief will not be granted where there is a plain, complete, speedy and adequate remedy at law.*

*Kucera*, 140 Wn.2d at 209, quoting *State v. Ralph Williams N.W. Chrysler Plymouth, Inc.*, 87 Wn.2d 298, 312, 553 P.2d 423 (1976).

Because the County would have had an adequate remedy at law in the form of its claim for “unjust enrichment,” injunctive relief is not appropriate, and the injunction previously entered should be vacated regardless of the correctness of the statutory interpretation on which it is based.<sup>31</sup>

**2. The balance of interests, including the public interest, shows that the injunction was erroneous.**

Even if the County had a clear legal right, the trial court should not have issued an injunction without balancing the interests of the parties and the public. *Kucera*, 140 Wn.2d at 221. The trial court’s injunction ignored the interests of the public at large and, more importantly, the health and safety of all mentally ill patients needing admission to WSH. The trial court’s injunction frustrated the cohesive and integrated public mental health system. It compromised the WSH’s medical director’s ability to exercise the medical judgment needed to provide for safe and adequate care for all long-term care patients, including those already at

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<sup>31</sup> Of course, following the 2006 amendments to RCW 71.05 and RCW 71.24, the counties no longer have such a remedy, nor do they have standing to pursue injunctive relief. Laws of 2006, ch. 333, §§ 103, 301.

WSH, those being committed from other RSNs, and those from Pierce County.

When the hospital was at full capacity prior to the injunction, Dr. Klein and his staff considered a range of factors to determine whether an individual patient would be admitted immediately or be placed on a wait list. CP 12-24, 244-59, 594-608, 1697-1705, 2267-70, 2383-88. Although not obligated to admit short-term patients, Dr. Klein also prioritized the admission of these patients over long-term patients, if the short-term patient was in an unsafe environment and the admitting RSN had no other alternative. CP 598. Prior to the trial court's injunction, the overriding consideration guiding these decisions was the best interests of all affected patients.

In addition, WSH had to perform these difficult duties while accommodating PCRSN's chronic failures. As noted above, PCRSN was almost always over its bed allocation, thereby depriving other RSNs of access to hospital beds. CP 266-69, 767, 827-75, 939-947, 1063-65, 1647-49. Thus, when the trial court ordered that WSH give PCRSN priority to the hospital beds, it directly impacted WSH's ability to address the needs of patients within the hospital and those committed from other RSNs. *Id.*, CP 4322-42; RP (Sept. 30, 2005) at 47-48. The trial court erred by directly rewarding PCRSN for its failures.

**3. No patients suffered harm because of delay in being admitted to WSH**

The average waiting time for admission of a PCRSN long-term patient was only two - four days. CP 17-18, ¶ 19; 260-62, 901, ¶ 8; 1066-68. There was never an attempt by any plaintiff to show that patients were harmed by these short delays or any other delay.<sup>32</sup> According to the County's own medical director, PSBH was perfectly capable of providing quality care and treatment to those patients until they were admitted to WSH, even if this took 30 days. CP 609-11, 613-17. This fact demonstrates that there were no compelling circumstances requiring judicial oversight of WSH admissions.

**4. The court's injunction errs by impinging on the Legislature's appropriation authority.**

The Department has only those funds appropriated to it by the Legislature pursuant to its authority under Article 8, Section 4 of the Washington Constitution. Compliance with the trial court's order has already required the Department open a new ward at WSH, and by so doing expend funds beyond what the Legislature initially appropriated for the 2005-2007 biennium to operate WSH. CP 2500, 2677-79.

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<sup>32</sup> As noted on page 9, WPAS, the only entity in this case that has standing to represent the patients themselves, never joined in Pierce County's efforts to secure an injunction requiring "timely acceptance" of long-term care patients. Nor did WPAS seek a ruling that individual patients had actually been harmed because they had waited longer than 24 hours for admission to WSH. CP 3300-08, 3365-88, 3606-10. If it had, a different legal standard applies. See RCW 71.05.120.

Opening the first new ward required the Department to expend \$7.5 million more than the amount appropriated for the 2005-07 biennium. *Id.* The ward was filled immediately, as the number of PCRSN patients admitted increased by an amount exceeding the capacity of the newly-opened ward. CP 2383-88. If the injunction stands as written, and particularly if it is enforced in the manner that the County sought below, compliance could have required the Department to make additional expenditures beyond the appropriation for operation of WSH. *Cf.* RCW 43.88.290 (“No state officer or employee shall intentionally or negligently: [o]ver-expend or over-encumber any appropriation made by law; fail to properly account for any expenditures by fund, program, or fiscal period; or expend funds contrary to the terms, limits, or conditions of any appropriation made by law”).

There is no doubt that a “court can order expenditures, if necessary, to enforce constitutional mandates.” *Braam*, 150 Wn.2d at 710. In the absence of such mandates, however—and none are implicated in this case<sup>33</sup>—the authority for appropriation of state funds is committed to the Legislature in Article 8, Section 4 of the Washington Constitution. As the Washington Supreme Court observed:

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<sup>33</sup> WPAS, the only plaintiff with standing to advance constitutional claims on behalf of patients, withdrew all such claims. CP 4323, ¶ B. Ironically, if the trial court’s order leads to significant overcrowding at WSH, the Defendants may very well face claims that the constitutional rights of persons committed to the hospital are being violated.

While it may be very tempting for this Court to order the Legislature to appropriate a reasonable amount of funds (*or attempt to do so through court orders to [a state agency]*), . . . such action would violate the separation of powers doctrine. . . . The judiciary is the branch of government that is empowered to interpret statutes, not enact them. While there are special situations when the courts can and should order the expenditure of funds, *specific appropriation to fund a statutory right, not involving constitutional rights or judicial functions, is normally beyond our powers to order.*

*Hillis*, 131 Wn.2d at 389-90 (emphasis added, citations omitted).

*Hillis* is instructive here. Property owners sought an order directing the Department of Ecology to process an application for appropriation of water. The applicable statute, RCW 90.03.290 provided, in relevant part, that when such an application was filed with Ecology “it shall be [Ecology’s] duty to investigate the application, and determine what water, if any, is available for appropriation, and find and determine to what beneficial use or uses it can be applied.” In opposing the requested order, Ecology asserted that there were many more applications pending at the time that the *Hillis*’ application was filed, and that its legislative appropriation was insufficient to allow it to process all applications when they were received. *Hillis*, 133 Wn.2d at 380.

Like this case, the *Hillis* case involved a statutory directive, not a constitutional right. Moreover, the Washington Supreme Court, in rejecting the *Hillis*’ claims, recognized that an order requiring the Department of Ecology to perform a function for which it did not have

sufficient appropriated funds was the equivalent of a judicial appropriation of funds.

Although Ecology does have a statutory duty to investigate water rights applications for public water, no time limit is stated in that statute, and *we have recognized that a statutory right can be enforced only up to the funding provided by the Legislature. . . . [The Hillises]. . . fail to recognize a legislative fact of life. Legislatures often provide laudable programs but may fail to fund them adequately or may decline to fund them at all. The decision to create a program as well as whether and to what extent to fund it is strictly a legislative prerogative. We will not direct the Legislature to act in this regard unless creation of a program and/or the funding thereof is constitutionally mandated.*

*Hillis*, 131 Wn.2d at 388-89 (emphasis added; internal quotation marks and citations omitted). Further, the *Hillis* Court acknowledged the relief sought in that case

would put Ecology in the legally untenable position of either violating a court order or violating the state constitution and RCW 43.88.130, which forbid agencies to expend any money in excess of the amount appropriated for a given purpose. Such action by this Court would only further add to the significant problems of the present water permitting system.

*Id.*

Similarly, the Department was placed in the “legally untenable” position of violating the trial court’s order or RCW 43.88.130, .290 by expending funds beyond those appropriated for the operation of WSH. Moreover, as in *Hillis*, the injunction has served to further add to the significant problems of the present mental health system. The trial court’s order should be vacated to remedy this situation.

The Department asked the court to reconsider and vacate, or at least modify the injunction. CP 2452-63, 2614-41, 2667-76. The trial court denied the Department's motion but issued another order effectively directing the Department to open yet another ward, furthering the erroneous interference legislative policy decisions. CP 4446-47.

For all of the reasons outlined above, the trial court's injunction order was improperly entered, and should be reversed.

**B. The Trial Court Improperly Disregarded The Legislature's Clarifying Legislation.**

After the trial court's final orders, the Legislature amended the pertinent statutes governing the public mental health system to clarify that Pierce County and other counties do not have standing to pursue the relief reflected in those orders.

The legislation at issue, Laws of 2006, ch. 333, provides that entities such as Pierce County "shall have no claim for declaratory relief [or] injunctive relief . . . against the state or state agencies . . . with regard to . . . the use or allocation of state hospital beds." The 2006 Legislature's purpose in adopting this provision was to resolve

ambiguities [that had been identified] regarding the appropriation and allocation of federal and state funds, and the responsibilities of the department of social and health services and the regional support networks with regard to the provision of inpatient mental health services under the community mental health services act, chapter 71.24 RCW, and the involuntary treatment act, chapter 71.05 RCW [by making] retroactive, remedial, curative, and technical amendments. . .

Laws of 2006, ch. 330, § 101(1). This provision was effective when signed by the Governor on March 29, 2006. *Id.* at § 404.

After the legislation became effective, the Department moved a second time, pursuant to CR 60 and RAP 7.2(e), for an order vacating the injunction. CP 3300-87. The trial court denied this motion on the premise that the injunction did not involve “the use or allocation of state hospital beds.” CP 4453-54; RP (Aug. 25, 2006) at 22-23.

As shown in this section, the trial court erred and the judgment should be reversed for this independent reason.

**1. The 2006 legislation operates retroactively to clarify that Pierce County does not have standing to pursue injunctive relief.**

Generally, legislative enactments apply prospectively. However, “an amendment will be applied retroactively if, (1) the legislature so intended; (2) it is ‘curative’; or (3) it is remedial, provided, however, such retroactive application does not run afoul of any constitutional prohibition.” *McGee Guest Home, Inc. v. Dep’t of Soc. & Health Servs.*, 142 Wn.2d 316, 324, 12 P.3d 144 (2000); *See also, In re Detention of Brooks*, 145 Wn.2d 275, 284, 36 P.3d 1034 (2001).

These conditions were met in the instant case—the Legislature specifically stated that the purpose of the 2006 legislation was to make “retroactive, remedial, [and] curative” amendments to both the Involuntary

Treatment Act (ITA) and the Community Mental Health Services Act (CMHSA), RCW 71.05 and 71.24, in order to resolve “ambiguities [that] have been identified regarding the appropriation and allocation of federal and state funds, and the responsibilities of DSHS and the RSNs with regard to the provision of inpatient mental health services under the [ITA and CMHSA].” Laws of 2006, ch. 333, § 101(1).

Moreover, the Legislature explicitly stated that, with an exception not pertinent here, the amendments were to apply to “all claims [by counties and their subsidiary agencies] against the state, state agencies, state officials, or state employees that *exist on* or arise after *the effective date of this section*.” *Id.* §§ 103(1) and 301(1) (emphasis added). Such language is further indication of the Legislature’s intent that the amendments be applied retroactively. *Brooks*, 145 Wn.2d at 285. Finally, the trial court’s order was based on statutory law, and there is no “constitutional” implication in vacating the injunction.<sup>34</sup>

Because this case relates to claims for injunctive relief existing on the effective date of both sections of the legislation, the trial court erred in

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<sup>34</sup> WPAS abandoned all constituent “constitutional” claims in this case. CP 3316. And of course the county, as a creature of the state, is subject to the plenary power of the Legislature. *State ex rel. Pierce County Comm’rs v. Clausen*, 95 Wn. 214, 223, 163 P. 744 (1917).

not vacating the injunction and dismissing the subsequent Order Re Motion For Contempt.

**2. Because the underlying law changed, CR 60(b) required dismissal of any future application the injunction.**

CR 60 provides, *inter alia*, that “upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding [when] it is no longer equitable that the judgment should have prospective application[.]” There are no Washington cases interpreting this provision in the context similar to this case. However, because the civil rules were derived from the Federal Rules of Civil Procedure, our courts often look to federal court decisions for guidance in applying the Washington rules. *Biggs v. Vail*, 124 Wn.2d 193, 197, 876 P.2d 448 (1994), citing *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 218-19, 829 P.2d 1099 (1992). Federal cases indicate that under the circumstances present in this case modification was not only permitted, it was required.

In *Agostini v. Felton*, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391 (1997) the U.S. Supreme Court considered whether a long-standing injunction should be modified pursuant to FRCP 60(b) because intervening court decisions called into question the substantive basis for the injunction. The Court answered the question in the affirmative, relying on its earlier decisions in *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 384, 112 S. Ct. 748, 116 L. Ed. 2d 867 (1992) (“A party seeking modification of a consent decree may meet its initial burden by

showing either a significant change either in factual conditions or in law.”) and *Railway Employees v. Wright*, 364 U.S. 642, 652-653, 81 S. Ct. 368, 5 L. Ed. 2d 349 (1961) (consent decree should be vacated under Rule 60(b) in light of amendments to the underlying statute). *Agostini*, 521 U.S. at 215. The Court further stated that “[a] court errs when it refuses to modify an injunction or consent decree in light of such changes.” *Id.*, citing *Wright*, 364 U.S. at 647.

The Legislature intended existing and future application:

[T]he legislature’s intent is that, except to the extent expressly provided in contracts entered after the effective date of this section, the department of social and health services and regional support networks shall resolve *existing and future* disagreements regarding [(a) [t]he allocation or payment of federal or state funds; (b) the use or allocation of state hospital beds; or (c) financial responsibility for the provision of inpatient mental health care] through nonjudicial means.

Laws of 2006, ch. 333, §101 (emphasis added). Thus, the Legislature’s clarification of the underlying law authorized and mandated dismissal of the injunction. The trial court erred by not acknowledging the legislature’s policy statement and by not setting aside the injunction.

**C. The Trial Court Erred In Requiring The Department To Pay For Long-Term Care Patients Before They Are Admitted To The Hospital.**

The County sought compensation under a “quasi contract” and “unjust enrichment” theory for the costs of caring for long-term patients during the time between commitment and admission to WSH. CP 45, ¶ 83.

The trial court entered judgment against the Department for \$949,634 under this theory for the period from September 10, 2002 through October 18, 2005. Ex. 1D; CP 4339, ¶ A.<sup>35</sup>

The trial court's order awarding restitution for waiting patients should be reversed for because the statute does not require such payment, it caused the Department to expend funds beyond its appropriation, there were express contracts precluding an unjust enrichment finding, and it was not equitable.

**1. The statute does not authorize the award and it exceeded the trial court's authority.**

The legal underpinning for restitution was the same erroneous conclusion forming the basis for the injunction, i.e., that RCW 71.05.320 requires the Department to assume custody and responsibility for long-

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<sup>35</sup> The trial court explained the breach of contract ruling as follows: "Defendants breached their contracts with PCRSN by mistakenly interpreting those contracts as shifting responsibility for [long-term] patients to PCRSN[.]" CP 4333. Neither Pierce County nor the trial court ever explained how advancing a particular interpretation of a contract could constitute a breach of the same contract, or how the County had been damaged by such an allegedly erroneous interpretation. The interpretation of a contract is a question of law to be decided by a court. *See, e.g. Swanson v. Liquid Air Corp.*, 118 Wn.2d 512, 521, 826 P.2d 664 (1992). One party's interpretation is either correct or it is not—basing a judgment of almost one million dollars on this thin conclusion makes no sense.

term patients immediately after they are committed. There is no statutory requirement justifying this order.<sup>36</sup>

In addition, the Legislature appropriates the funds for the Department to distribute to the RSNs, and requires the Department to distribute those funds within those limits. *See supra* footnote 22. The award of \$949,634 based on the theory that PCRSN was not compensated for care provided to long-term patients, exceeded the amounts appropriated by the Legislature and already distributed to the RSNs at the time of the trial court's order. CP 4339, ¶ A; Exs. 319, 331-36; *Hillis*, 131 Wn.2d at 389-90 (specific appropriation to fund a statutory right, not involving constitutional rights or judicial functions, is normally beyond our powers to order).

In the supplemental budget, the Legislature appropriated funds to cover the cost of the new ward and the order to pay \$949,634 to Pierce County. Laws of 2006, ch. 372, § 204 (2)(d) and (5)(b). However, while the Legislature offered this political solution, this does not support the trial court's orders. The orders enjoining operations at WSH and ordering restitution were unlawful intrusions on the appropriation process and legislative powers.

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<sup>36</sup> The APA also does not authorize restitution because to get monetary damages, another statute must expressly authorize recovery of such damages. RCW 34.05.574(3).

**2. Express contracts preclude an unjust enrichment finding.**

Importantly, a party to an express contract may not bring an action on an implied contract relating to the same subject matter. *Chandler v. Wash. Toll Bridge Auth.*, 17 Wn.2d 591, 604, 137 P.2d 97 (1943). Generally, the rule of law is that in the absence of a breach of a contract, each party is bound by the terms of the contract. *Washington Ass'n of Child Care Agencies v. Thompson*, 34 Wn. App. 235, 238, 660 P.2d 1129, review denied 99 Wn.2d 1020 (1983). Here, none of the contracts in question required the Department to pay for long-term patients while they were waiting admission to WSH. But even if the Court determines that there is no express contract relating to this matter, application of quasi-contract principles is also unwarranted.

Quasi-contracts (contracts implied in law) are not real contracts, but obligations created by law. *Chandler*, 17 Wn. 2d at 604. They are not “based on ‘facts and circumstances showing a mutual consent and intention to contract,’ but rather on the ‘the fundamental principle of justice that no one should be unjustly enriched at the expense of another.’” *Lake Limerick Country Club v. Hunt Mfg. Homes, Inc.*, 120 Wn. App. 246, 261, 84 P.3d 295 (2004) citing *Milone v. Tucci, Inc. v. Bona Fide*

*Builders, Inc.*, 49 Wn. 2d 363, 367, 301 P.2d 759; *Chandler*, 17 Wn. 2d at 600-01.

Under quasi-contract theories, restitution may be awarded only if a court finds unjust enrichment. Although Washington courts have previously characterized unjust enrichment and quantum meruit as equitable forms of recovery, the two doctrines are better viewed as legal remedies in the form of restitution. *Ducolon Mech., Inc. v. Shinstine/Forness, Inc.*, 77 Wn. App. 707, 711, 893 P.2d 1127 (1995); *Bailie Commn'cs, Ltd. v. Trend Bus. Sys., Inc.*, 61 Wn. App. 151, 160, 810 P.2d 12 (1991), 814 P.2d 699.

“A person has been unjustly enriched when he has profited or enriched himself at the expense of another contrary to equity.” *Farwest Steel Corp. v. Mainline Metal Works, Inc.*, 48 Wn. App. 719, 731-32, 741 P.2d 58 (1987). Enrichment alone will not trigger the doctrine; the enrichment must be unjust “both under the circumstances and as between the two parties to the transaction.” *Farwest Steel Corp.*, 48 Wn. App. at 732, 741 P.2d 58 (citing *McGrath v. Hilding*, 41 N.Y.2d 625, 394 N.Y.S.2d 603, 606, 363 N.E.2d 328, 331 (1977)).

Pierce County claims the contracts do not require it to assume the financial responsibility once the individual is committed to long-term care, and the Department was and will continue to be unjustly enriched by

refusing to admit PCRSN or PSBH long-term patients. On the contrary, the Department was not unjustly enriched because it distributed millions of dollars in legislatively-appropriated dollars for PCRSN to develop and manage a community-based mental health system. Moreover, because of the trial court's invalidation of liquidated damages, the Department could no longer offset any of the costs associated with PCRSN being over its bed allocation, yet it still had to take care of more PCRSN patients than any other RSN. See footnote 22.

Thus, if the parties failed to clearly delineate the matter of reimbursement for waiting patients in the contracts, Pierce County's remedy was to try and get the Department to amend the contract to include such a provision, or terminate the contract for convenience. The remedy was not to seek a court-imposed amendment to the contracts. *Washington Ass'n of Child Care Agencies*, 34 Wn. App. at 241 (whether it was reasonable for an agency to enter into contracts or accept rates from the state which do not compensate for total costs, is a determination for the agency to make without judicial interference, and if the agency does not like the terms, it can refuse to contract or provide services).

The trial court did correctly rule on this issue as to Pierce County's other contract-related claims, but erred by not applying that principle to this particular claim. CP 4329, ¶¶ 5-9 ("Pierce County realized it was not

required to sign the 01-03 or the 03-05 contracts and that it could terminate the contracts for convenience upon 90-days notice”); CP 4334-35, ¶¶ 3-7; 4336, ¶¶ 2-5; RP (Nov. 23, 2005). The trial court erred by not applying the same analysis to the waiting patient and liquidated damages claims.

**3. Equity does not support the trial court’s order to pay restitution for waiting patients.**

As a matter of prospective application, equitable relief was erroneous because PCRSNs over-utilization of beds at WSH was one of the primary reasons that “timely admissions” did not occur. As noted by Dr. Andrew Phillips, WSH’s Chief Executive Officer, Pierce County historically used a substantially disproportionate share of WSH beds relative to its population. CP 266-69. Further, the County had an obligation to maintain patients in the community and to avoid seeking long-term care admissions, an obligation which Pierce County consistently failed to honor.

It is well-settled that one who seeks equitable relief must come to court with “clean hands.” *Income Investors v. Shelton*, 3 Wn.2d 599, 602, 101 P.2d 973 (1940) (“Equity will not interfere on behalf of a party whose conduct in connection with the subject-matter or transaction in litigation has been unconscientious, unjust, or marked by the want of good faith, and

will not afford him any remedy.”). Because Pierce County’s conduct was a major contributing factor to the costs it incurred, basic principles of equity dictate that the Department should not be held liable for those costs.

The trial court’s “equitable” remedy is also illogical. The amount of costs incurred in maintaining patients at the RSN are within the control of the RSN, and totally outside the control of the Department. CP 12-24. For example, when evaluated against comparable hospitals, PSBH was found to have a substantially higher average bed cost per day than other RSNs. CP 254-59. In 2002, PSBH beds cost \$912.13 compared to the average of \$656.17 per day. CP 259. At \$912.13 per day, this was double what it costs to care for a patient at WSH. CP 589-90.

A performance review conducted in 2002 identified several reasons for these higher costs, including PCRSN’s management structure, inefficient policies and procedures, and lack of key financial and utilization management systems resulting in an almost immediate \$4 million loss to the County after they first purchased the hospital. CP 257, 591-92.

Rewarding the County for unclean hands by requiring the Department to pay these costs is hardly equitable. The judgment should be set aside.

**D. The trial court erred by invalidating WAC 388-825-0203, the agreed liquidated damages contractual provisions, and ordering a refund to Pierce County.**

Following trial, the court entered judgment against the Department in the amount of \$1,082,435 as reimbursement to PCRSN for the liquidated damages imposed on the County. CP 677, 718-19; CP 2702, ¶ 8. This reimbursement was premised on the court's ruling that WAC 388-865-0203 was invalid and that the contract provisions were invalid because they made reference to the WAC. RP (Sept. 9, 2005 re: Liquidated Damages); CP 1856-57, ¶¶ 2-3; 4327-28, ¶¶ B(7)-(10); 4341, ¶ D.

The trial court erred for three reasons. First it is based on the mistaken conclusion that WAC 388.865.0203 is invalid. Second, it is based on the erroneous conclusion that an agreed to and binding contractual provision was unenforceable. Third, it was error because the collection of liquidated damages caused no financial harm to PCRSN; therefore, it erred by "fashioning an equitable remedy" even though it found that "neither the plaintiffs nor their providers suffered a loss from the withholding of liquidated damages."<sup>37</sup> CP 4334.

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<sup>37</sup> As part of its equitable remedy, the court directed that Pierce County could only use this award for "new or additional mental health services." CP 4334, ¶ 3. Assuming *arguendo* that the trial court's equitable remedy was correct, the trial court acted within its discretion by including this provision.

The trial court's ruling was predicated on its reading of RCW 71.24.035(15)(d) which, as it then read, provided that the Department was to "[d]eny funding allocations to regional support networks based solely upon formal findings of noncompliance," and then only after the RSN had been given "30 days" within which to correct the problem.<sup>38</sup> This "plain meaning" reading of one section of a complex statutory and regulatory scheme was error. A better reading is that this provision relates to decisions by the Department to "deny funds prior to allocation and release," not to the deduction from already allocated funds based on subsequent behavior by Pierce County, i.e., exceeding its bed allocation that it contractually agreed could cause a deduction from distributed funds in the form of liquidated damages.

**1. The adoption of WAC 388-865-0203 was a valid exercise of the Department's broad rule-making authority.**

WAC 388-865-0203 was promulgated in 2001 pursuant to RCW 71.24.035(5)(c), which authorizes the Department to "[d]evelop and adopt rules establishing state minimum standards for the delivery of mental health services pursuant to RCW 71.24.037 including, but not limited to ... (i) regional support networks." This is consistent with the legislative

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<sup>38</sup> The 30-day notice requirement was stricken by the remedial 2006 legislation. See Laws of 2006, Ch. 333, § 201. The legislation also provided that the RSN's sole remedy were those identified in the contracts.

intent that the state hospitals are reserved for “handling the most complicated long-term care needs of patients” and that “community mental health service delivery systems focus on maintaining mentally ill individuals in the community. RCW 71.24.016.

The rule was adopted as part of “omnibus” rule-making, revising virtually all rules relating to the public mental health system. *See* Wash. St. Reg. (WSR) 01-12-047. As described in a November 2000 report, “DSHS faces the difficult task of distributing limited resources across the mental health system, including state hospitals.” CP 724-49; *see also* CP 750-58.

Prior to adoption of the rule, Westside RSNs (i.e., those utilizing Western State Hospital), and Eastside RSNs (utilizing Eastern State Hospital) allocated beds differently and proposals for assessing liquidated damages on the Eastside and Westside were different. *Id.*

These differences, as well as differential use of state hospital beds, have created increasing political struggle among the RSNs and across the mental health system.

....

These ongoing concerns about state hospital bed allocation in Washington State have suggested that there is a need to develop a more systematic and data-driven bed allocation formula for both the Westside and Eastside RSNs.

CP 725, 728.

The Department’s cost benefit analysis of the proposed rule described the effect of the rule as follows:

(WAC 388-865-0203) Placing the formula for distribution of state hospital bed allocations to RSNs in rule. This action will change how state hospital beds are allocated to the RSNs, causing some RSNs to experience a reduction in resources while other RSNs have an increase in resources. Previously the distribution of state hospital beds was set by Division policy and was included in the contract with the RSNs. The cost for each state hospital bed in the distribution is approximately \$370 per day. An example of the effect of this change is that Pierce County's state hospital bed allocation is reduced from 237 beds to 169 beds. Another example is that NorthSound RSN's state hospital bed allocation is increased from 92 beds to 139 beds. These examples show the number of state hospital beds the RSNs have access to – RSNs may utilize up to the allocated state hospital beds without incurring charges for the beds. Once the RSNs are over the total number of state hospital beds, the Mental Health Division charges the RSNs whose use of the state hospital beds exceeds their allocation.

CP 751. The redistribution of beds “will provide persons around the state with better availability of state hospital beds, regardless of which RSN they live in.” CP 752.

An RSN was assessed liquidated damages only if it exceeded its individual bed allocation *and* the hospital's census is above its total funded capacity. If multiple RSNs exceeded their allocations on any given day *and* the hospital's census exceeded its funded capacity, each RSN was assessed a proportional share of the overage. WAC 388-865-0203(3); CP 758.

**2. Pierce County voluntarily signed the contracts which included the liquidated damage provision and reference to WAC 388-865-0203.**

Under Washington law “liquidated damages agreements fairly and understandingly entered into by experienced, equal parties with a view to just compensation for the anticipated loss should be enforced.” *Walter Implement v. Focht*, 107 Wn.2d 553, 558, 730 P.2d 1340 (1987). It is undisputed that Pierce County agreed to the contract provision including the liquidated damages rule. CP 1390, 1465; Ex. 226, ¶ 8.4 (D0170002). They also agreed to operate within the particular number of allocated beds at WSH. CP 1376, ¶ 2.5.1; 1451-52, ¶ 2.4.1.

For the 2001-2003 contracts, Pierce County submitted alternative language on several provisions of the contract, but it did not propose to either delete or modify the liquidated damages provision. In particular, Pierce County submitted a “counter offer” with certain terms lined out, but left the liquidated damages term intact. CP 830-74.

In 2002, when the Department agreed to renegotiate its contract to address RSN concerns, minutes from the PCRSN work group reflect that PCRSN Administrator Fran Lewis expressed satisfaction with the Department’s intentions: “MHD is trying to negotiate in good faith to come to agreement over its contract with RSNs.” CP 775. In negotiating the 2003-05 contract, the liquidated damages provision was not a

contentious issue. Indeed Ms. Lewis urged the Department to expedite the final contract in its current form without making additional changes. CP 875. The 2006-2007 contract process was no different, and PCRSN again agreed to pay liquidated damages. Ex. 226, ¶ 2.3.2 (D0169991).

Pierce County would from time to time threaten to refuse to sign the contracts, but in the end, the County always signed and the contracts always had a liquidated damages provision. CP 775, 830-74, 1390, 1465; Ex. 226, ¶ 8.4 (D0170002).

**3. Pierce County incurred no financial loss by imposition of liquidated damages because they were passed on to the County's subcontractors.**

Pierce County adopted the same liquidated damages clause in contracts with its three subcontracted providers. Exs. 366-68. PCRSN's operations coordinator Diana Fitschen testified that its three core providers were responsible for maintaining PCRSN's census limits and facilitating discharges at Western State Hospital:

I mean, my understanding would also be that the out-patient providers are responsible for having liaisons at Western State Hospital to assist the discharge of individuals, and that because of that responsibility they are being, you know, they are also incurring liquidated damages when their liaisons aren't getting people out of the hospital to keep the census down.

CP 760-62; *see also* CP 4328, ¶¶ 8, 10; Exs. 366-68.

Remarkably, PCRSN not only passed on liquidated damages to its own providers, it went one step further with its own “penalties” and “rewards,” as evidenced by Ms. Fitschen’s testimony:

Q: Are you aware of any instances when the RSN has imposed or assessed liquidated damages against its providers that were not liquidated damages the Department had imposed on the RSN?

A: Yes.

Q: What circumstances would be or would involve the assessment of liquidated damages by the RSN against a provider?

A: First of all we never call them liquidated damages. We hold the providers responsible, as I mentioned earlier, for maintaining our target census at Western.

And we had not only penalties, but we also had rewards. And so on I think there was a three-month basis we would look at the average daily census and compute whether or not the average daily census had been exceeded or had been under. And they were under, then we would give them basically a reward; we would give them some money. And on those times when they were over, then we would assess a penalty to them.

CP 763.

**4. The liquidated damages contractual provision was an important tool in meeting the legislative intent to provide most mental health care in the community.**

The contracts called for PCRSN to maintain most patients in the community, not the state hospital. The liquidated damages contract provisions served to encourage not only PCRSN but the other RSNs to live up to that obligation. CP 779.

The assessed liquidated damages did drop during state Fiscal Year 2005; from a high of \$178,624 in September 2004 to a low of \$13,026 in

May 2005, demonstrating that liquidated damages actually accomplished its intended purpose. CP 940. In part, PSBH began doing a better job at diverting patients away from WSH and avoiding 90-day commitments for those patients who do not really need it. CP 780-85. If the trend had continued in state Fiscal Year 2006, Pierce County's liquidated damages would have reduced by 78 percent from Fiscal Year 2005. CP 941.

In short, the trial court erred by requiring reimbursement of liquidated damages, which cannot be justified on either legal or equitable grounds. Accordingly the judgment should be reversed.

## VII. CONCLUSION

For the reasons set forth above, the trial court's orders regarding long-term care patients and liquidated damages should be reversed in their entirety, the injunction dissolved and the case dismissed.

RESPECTFULLY SUBMITTED this 13th day of November,  
2006.

ROB MCKENNA  
Attorney General



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### CERTIFICATE OF SERVICE

I, Laurie L. Carley, certify that I served a copy of Brief of Appellants on all parties or their counsel of record on the date below to Sanford E. Pitler, Marie R. Westermeier, Michael Madden, Linda M. Coleman, William Leedom, and Elizabeth A. Leedom, attorneys for Plaintiffs, Pierce County, Pierce County Regional Support Network, and Puget Sound Behavioral Health, addressed to Sanford Pitler, et al., Bennett Bigelow & Leedom, P.S., 1700 Seventh Avenue, Suite 1900, Seattle, WA 98101, fax (206) 622-8986; and to Deborah A. Dorfman, Stacie Siebrecht, and David B. Girard, attorneys for Washington Protection and Advocacy System, Inc., addressed to Deborah Dorfman, et al., 315 Fifth Avenue South, Suite 850, Seattle, WA 98104, fax (206) 957-0729

☒ US Mail Postage Prepaid via state Consolidated Mail Service

and to Ira Burnim, and Jennifer Mathis, Bazelon Center For Mental Health Law, 1101 15th St NW Ste 1212, Washington DC 20005 via US Mail Postage Prepaid via Consolidated Mail Service.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 13th day of November, 2006, at Lacey, Washington.

  
Laurie L. Carley, Legal Assistant

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Oct 7, 2005  
DEPUTY

**STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT**

PIERCE COUNTY, et al ,

Plaintiffs,

v

STATE OF WASHINGTON, et al ,

Defendants

NO 03-2-00918-8

**ORDER RE CROSS MOTIONS FOR  
SUMMARY JUDGMENT ON LONG  
TERM CARE PATIENTS**

THIS MATTER came before the Court on Pierce County's Motion for Partial Summary Judgment Re Responsibility for Long-Term Patients and Defendants' Motion for Partial Summary Judgment on the same claims. The Court considered the pleadings, declarations and exhibits offered by the parties, and heard oral argument, and issued an oral decision on September 9, 2005 granting plaintiffs' motion in part and denying defendants' motion. Having determined that there are no genuine issues of material fact regarding custodial and financial responsibility for Pierce County Regional Support Network (RSN) patients committed for 90 or 180 days and that plaintiffs are entitled to judgment as a matter of law, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Pierce County's Motion for Partial Summary Judgment Re Responsibility for Long-term patients is hereby GRANTED in part and denied in part, and that Defendants' motion on the same claims is DENIED, as set

ORDER RE LONG TERM CARE

1

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**APPENDIX  
A-1**

0-000001860

1 forth below The amount of retrospective payment of alleged uncompensated costs relating to  
2 Pierce County RSN or Puget Sound Behavioral Health (PSBH) caring for 90 or 180 day  
3 committed patients is a matter reserved for trial

4 The Court also considered additional pleadings and argument regarding the terms of the  
5 Order on September 30, 2005

6 Plaintiffs seek declaratory and injunctive relief under the Administrative Procedure  
7 Act, RCW Ch 34 05 RCW 34 05 574 requires the Court to set forth its findings of fact and  
8 conclusions of law with respect to its review under RCW 34 05 570 Accordingly, the Court  
9 makes the following findings of fact and conclusions of law

#### 10 I. FINDINGS OF FACT

11 A The State of Washington, acting through Western State Hospital (WSH),  
12 adopted a policy or practice in approximately June 2002 of declining to accept patients  
13 committed by the courts to the custody of the Department of Social and Health Services  
14 (DSHS) for long term care under RCW 71 05 320, based on conditions at WSH including  
15 patient safety, patient census or staffing This policy or practice has required plaintiff Pierce  
16 County, acting through PSBH and Pierce County RSN, to care for Pierce County RSN or  
17 PSBH 90 or 180 day long term patients who have been committed by the courts to DSHS's  
18 custody at WSH, until WSH agrees to accept them or the patient is otherwise discharged

19 B PSBH is not a facility certified by DSHS to provide long-term care to patients  
20 committed pursuant to RCW 71 05 320

#### 21 II CONCLUSIONS OF LAW

22 1 Plaintiffs' claims under Ch 34 05 are reviewable under RCW 34 05 570(4)

1           2       The State has the sole responsibility under the Involuntary Treatment Act (ITA)  
2 for providing adequate care and individualized treatment to 90 or 180 day long-term patients  
3 once a court signs an order committing the patient to the custody of DSHS. Pierce County  
4 RSN and PSBH have no duty to provide care and treatment to 90 or 180 day committed  
5 patients under RCW Ch 71 05 or RCW Ch 71 24, or the contracts entered into by Pierce  
6 County RSN and DSHS for the 2001-03 and 2003-05 biennia, except such duties as may exist  
7 to individual patients under RCW Ch 71 24 or other provisions of law until such time as the  
8 patient is transferred from PSBH to WSH or another facility identified by DSHS that is able to  
9 provide the care needed by the patient  
10

11           3       When WSH declines to timely accept Pierce County RSN or PSBH 90 or 180  
12 day long-term patients committed to the custody of DSHS for reasons related to WSH census  
13 or staffing and not related to safety of the patient, and thereby requires that these patients  
14 remain at PSBH or under Pierce County RSN's responsibility, DSHS fails to perform a duty  
15 required by law and acts outside its statutory authority  
16

17           4       Plaintiffs were substantially prejudiced when WSH declined to accept Pierce  
18 County RSN or PSBH 90 or 180 day long term patients committed to the custody of DSHS by  
19 the courts  
20

21           5       The State is financially responsible for unreimbursed costs associated with  
22 PSBH or Pierce County RSN providing care to 90 or 180 day long-term committed patients  
23 whose custody DSHS has declined to timely accept  
24

25           6       This order applies to adult patients at PSBH or under Pierce County RSN's  
26 responsibility committed pursuant to Chapter 71 05 RCW

7 In the event WSH is unable to provide proper medical care or is unable to provide for the patient's safety for reasons other than hospital patient census or staffing, DSHS or WSH shall arrange for the patient's care elsewhere

### III. Injunction

1 Pursuant to RCW 34 05 574 and RCW 71 05, Defendants are enjoined from declining to timely accept adult patients committed pursuant to Ch 71 05 RCW for 90 or 180 days who are at PSBH or that PCRSN is responsible for at the time of commitment, subject to the conditions set forth below

a Timely acceptance means that WSH must accept a 90 or 180 day long-term ITA patient where (i) PSBII or PCRSN notifies WSH that an order of commitment has been entered and that the long term patient is ready for transfer, and (ii) PSBII or PCRSN is able to transport the patient for arrival at WSH at a reasonable time, unless otherwise agreed to by the respective representatives. When PSBII or Pierce County RSN is unable to transport the patient for arrival by a reasonable time on the day of the court order, the patient shall be transported the next day.

b Where, at the time WSH is notified that an order of commitment has been entered, a patient committed by a court to the custody of DSHS for 90 or 180 days has a medical condition that WSH is unable to provide for, or if there is an issue of patient safety involving factors other than WSH's census that makes it medically inappropriate or unsafe to accept the patient at WSH, WSH or DSHS shall have a reasonable period of time to arrange for the necessary care for the patient elsewhere. The costs to be paid by DSHS regarding any patient

that WSH is not able to admit because of medical or safety issues is a matter to be determined at trial

2 Defendants will not be required to comply with this injunction until December 9, 2005. Between the date of this Order and December 8, 2005, if WSH lacks the ability to admit additional patients and the WSH Medical Director or designee determines that patients other than PSBH or PCRSN patients have a greater need for WSH services or have been on the waiting list longer, the WSH Medical Director or designee shall have the flexibility to determine which patients shall have priority, notwithstanding the foregoing provisions. On and after December 9, 2005, Defendants shall be fully subject to the provisions set forth in paragraph 1. This provision does not relieve DSHS of financial responsibility for the costs of the patient's care.

#### IV REMAINING ISSUES

Defendants' motion for summary judgment dismissal of plaintiffs' claim related to long term patients is DENIED for the reasons stated above. Plaintiffs' motion with respect to liability under RCW 42.135.060 is denied as moot. The amount of compensation due to Plaintiffs' for unreimbursed costs of caring for 90 or 180 day long term patients housed at PSBH or under Pierce County RSN's responsibility after WSH's decision to decline to accept the court-committed patient is reserved for trial or other determination.

The following documents were called to the Court's attention before this Order was entered

- 1 Pierce County's Motion for Partial Summary Judgment Re Responsibility for  
Long-Term Patients (filed 7/29/05),  
2 Declaration of Diana Fitschen (filed 7/29/05),

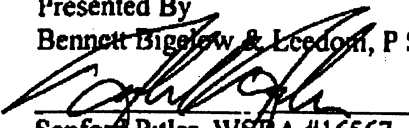
1	3	Declaration of Sanford Pitler and Exhibits 1-29 attached thereto (filed 7/29/05),
2	4	Declaration of David Stewart (filed 7/29/05)
3	5	Defendants' Opposition to Motion for Partial Summary Judgment re Long-Term
4		Patients (filed 8/29/05),
5	6	Declaration of Carrie L. Bashaw and Exhibits 1-14 attached thereto (filed
6		8/29/05),
7	7	Plaintiffs' Reply Brief in Support of Motion for Partial Summary Judgment Re
8		Responsibility for Long-Term Patients (filed 9/6/05),
9	8	Declaration of Charles R. Benjamin and Exhibit 1 attached thereto (filed 9/6/05),
10	9	Declaration of David Dula (filed 9/6/05),
11	10	Declaration of Anders Edgerton and Exhibit 1 attached thereto (filed 9/6/05),
12	11	Declaration of William Hardy and Exhibit 1 attached thereto (filed 9/6/05),
13	12	Declaration of Frances Lewis and Exhibit 1 attached thereto (filed 9/6/05),
14	13	Declaration of Michael Madden in Support of Reply and Exhibits 1-4 attached
15		thereto (filed 9/6/05),
16	14	Declaration of Jean H. Robertson and Exhibit 1 attached thereto (filed 9/6/05),
17	15	Declaration of Maryann Welch and Exhibit 1 attached thereto (filed 9/6/05),
18	16	Plaintiffs' Supplemental Filing in Support of Motion for Summary Judgment Re
19		Long-Term Patients (filed 9/8/05),
20	17	Declaration of Michael Madden in Support of Supplemental Filing and Exhibit 1
21		attached thereto (filed 9/8/05),
22	18	Defendants' Motion for Partial Summary Judgment (filed 8/12/05),
23	19	Declaration of Ira Klein, MD in Opposition to Plaintiffs' Motion for Writ of
24		Mandamus (filed 10/27/03),
25	20	Declaration of Julie Klingbeil and Exhibit 1 attached thereto (filed 8/12/05),
26	21	Declaration of Andrew Phillips and Exhibit 1 attached thereto (filed 8/12/05),
	22	Declaration of William Williams and Exhibits 1-2 attached thereto (filed 8/12/05),
	23	Plaintiffs' Opposition to Defendants Motion for Partial Summary Judgment and
		Motion to Strike Declaration of Andrew Phillips (filed 8/29/05),
	24	Declaration of David Dula (filed 8/29/05),

- 1 25 Declaration of David E Stewart and Exhibits 1-2 attached thereto (filed 8/29/05),  
2 26 Declaration of Marie Westermeier and Exhibit attached thereto (filed 8/29/05),  
3 27 Defendants' Reply Brief in Support of Motion for Partial Summary Judgment on  
4 Claims Relating to Responsibility for Long-Term Patients and Federal Law (filed  
5 9/6/05),  
6 28 Second Declaration of Julie Klingbeil (filed 9/6/05), and  
7 29 Second Declaration of Andrew Phillips (filed 9/6/05)  
8 30 Second Declaration of Dr Ira Klein and Exhibits 1-9 attached thereto (filed  
9 9/28/05)  
10 31 Declaration of Carrie Bashaw, Ex 1-3 attached thereto (filed 9/28/05)  
11 32 Declaration of Indu Thomas (filed 9/28/05)  
12 33 Declaration of Deborah Dorfman (filed 9/29/05)

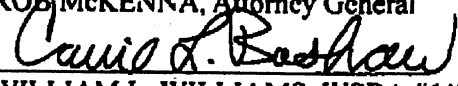
13 Dated this 7th day of October 2005

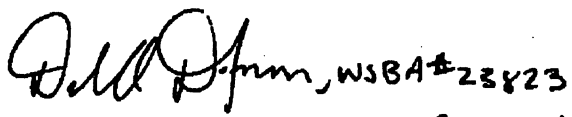
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THE HONORABLE PAUL A CASEY  
SUPERIOR COURT JUDGE

15 Presented By  
16 Bennett Bigelow & Leedom, P S

17   
Sanford Pitler, WSBA #16567  
18 Michael Madden, WSBA # 08747  
19 Marie Westermeier, WSBA #18623  
Attorneys for Pierce County Plaintiffs

Approved as to form  
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22 Assistant Attorneys General  
Attorneys for Defendants

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24 David Dorfman, WSBA #23823  
25 Attorney For Plaintiff Washington Protection Advocacy  
26 System

FILED  
SUPERIOR COURT  
THURSTON COUNTY WASH

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BETTY J. GORDON, CLERK

BY GLPUTY

Hon Paula Casey

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THURSTON COUNTY

PIERCE COUNTY, a political subdivision of  
the State of Washington, PIERCE COUNTY  
REGIONAL SUPPORT NETWORK a  
division of the Pierce County Department of  
Human Services, and PUGET SOUND  
BEHAVIORAL HEALTH, a psychiatric  
hospital owned and operated by Pierce County  
Regional Support Network, WASHINGTON  
PROTECTION AND ADVOCACY SYSTEM,  
INC.,

Plaintiffs,

vs

STATE OF WASHINGTON, STATE OF  
WASHINGTON, DEPARTMENT OF SOCIAL  
AND HEALTH SERVICES, MARYANNE  
LINDEBLAD in her official capacity as Acting  
Director of the Mental Health Division and  
ANDREW PHILLIPS in his official capacity as  
Chief Executive Officer of WESTERN STATE  
HOSPITAL,

Defendants

NO 03-2-00918-8

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW - Page 1

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APPENDIX  
A-8

0-000002696

1 **I. MATTERS RESOLVED PRIOR TO TRIAL**

2 This matter came before the Court for trial on November 10, 14-17, and 21-23,  
3 2005 Certain claims and counterclaims were resolved or partially resolved by pre-trial  
4 orders as indicated below All references are to plaintiffs' Fourth Amended Complaint and  
5 Defendants' Answer thereto

6 **Claim A - Failure to Provide Adequate Care and Individualized Treatment.**

7 All claims under this cause of action were compromised or dismissed, as reflected in the  
8 Order of Enforcement entered September 9, 2005 and Order Granting Plaintiffs' Motion  
9 for Partial Voluntary Nonsuit entered October 7 2005

10 **Claim B - Due Process Violations** Portions of plaintiffs' claims under this cause  
11 of action were compromised or dismissed, as reflected in the Order of Enforcement  
12 entered September 9, 2005 and the Order Re Cross Motions for Summary Judgment on  
13 Long Term Care Patients entered October 7, 2005 The claim under this cause of action  
14 relating to "alleged violation of substantive due process rights for defendants' failure to  
15 admit patients to Western State Hospital committed under the ITA for 90 or 180 days"  
16 was abandoned by the Plaintiffs and is hereby dismissed

17 **Claim C - Refusal to Accept Responsibility for Patients Committed to the**  
18 **State's Custody for Long-Term Care** Liability issues regarding this claim were  
19 resolved by the Order Re Cross Motions for Summary Judgment on Long Term Care  
20 Patients entered October 7, 2005

21 **Claim D - Failure to Make WSH Beds Available To PCRSN for Short Term**  
22 **E&T Services** Claim dismissed on plaintiffs motion for summary judgment, as  
23 reflected in the Order Granting In Part and Denying In Part Plaintiffs' Motion for Partial  
24 Summary Judgment Re "85% Requirement" entered November 10, 2005

25  
26  
FINDINGS OF FACT AND CONCLUSIONS  
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1       **Claim E - Failure to Fund Community and Residential Services - Unlawful**  
2 **Agency Action.** Voluntarily dismissed by plaintiff, as reflected in the Order Granting  
3 Plaintiffs' Motion for Partial Voluntary Nonsuit entered October 7 2005

4       **Claim F - Unfunded Mandates. Violation of RCW 43.135.060** Dismissed as  
5 moot with respect to long term patients by the Order Re Cross Motions for Summary  
6 Judgment on Long Term Care Patients entered October 7 2005, and voluntarily dismissed  
7 by plaintiffs in all other respects as reflected in the Order Granting Plaintiffs' Motion for  
8 Partial Voluntary Nonsuit entered October 7, 2005

9       **Claim G - Invalidity of Rule and Contractual Provision Pertaining to Bed**  
10 **Allocation and Liquidated Damages as applied to PCRSN** Invalidity of rule and  
11 contract provision, as well as liability issues resolved as reflected in the Order Granting  
12 Pierce County's Motion for Partial Summary Judgment on Liquidated Damages entered  
13 October 7, 2005

14       **Claim H - Alternative Claim, Failure to Comply with WAC 388-865-0203(c).**  
15 Voluntarily dismissed by plaintiffs as reflected in the Order Granting Plaintiffs' Motion  
16 for Partial Voluntary Nonsuit entered October 7, 2005

17       **Claim I - Failure to Comply with Requirements of WAC 388-865-0526 related**  
18 **to Single Bed Certification.** Resolved by the parties as reflected in the Order of  
19 Dismissal Re Single Bed Certification Claim entered November 8 2005

20       **Claim K - Invalidity of Laws of 2001, Ch. § 204(e) and WAC 388-865-0201**  
21 Dismissed on defendants' motion, as reflected in the Court's September 30, 2005 Order  
22 Denying Plaintiffs' Motion for Partial Summary Judgment Re WAC 388-865-0201 and  
23 Laws of 2001 2<sup>nd</sup> Ex Sess, Ch 7, § 204(1)(E), and Granting Defendants' Motion for  
24 Partial Summary Judgment Re WAC 388-865-0201 and Laws of 2001, 2<sup>nd</sup> Ex Sess, Ch  
25 7, § 204(1)(E)

26

FINDINGS OF FACT AND CONCLUSIONS  
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1        **Claim L – Contracts Violate Federal Medicaid Law and Policy.** Defendants  
2 asserted by motion that Plaintiffs sought to enforce federal Medicaid Law through a  
3 private right of action under Section 1983. In response to Defendants' Motion for Partial  
4 Summary Judgment filed on August 12, 2005, Plaintiffs stated on the record that they  
5 were not making any claim based upon a private right of action under Medicaid law. The  
6 Court deferred ruling on Defendants' subsequent Motion for Partial Summary Judgment  
7 Re Contractual Medicaid Claim and issues raised therein were resolved at trial and are  
8 addressed in this Order. Prior to trial, Plaintiffs' withdrew that aspect of this claim  
9 regarding the actuarial soundness of the Medicaid rates used by Defendants.

10        **DEFENDANTS' COUNTERCLAIMS AGAINST PIERCE COUNTY AND**  
11 **PIERCE COUNTY REGIONAL SUPPORT NETWORK.** Voluntarily dismissed in  
12 certain respects as reflected in the Court's Order of Enforcement entered September 9  
13 2005, and dismissed in all remaining aspects on plaintiffs' motion, as reflected in the  
14 Order Granting In Part and Denying In Part Plaintiffs' Motion for Partial Summary  
15 Judgment Re "85% Requirement" entered November 10, 2005.

16                                **II. CLAIMS RESOLVED AT TRIAL**

17        The following claims were tried to the Court:

18        1        The portion of Pierce County's Claim C for recovery of its unreimbursed  
19 costs, and interest thereon, of caring for patients committed to the custody of the  
20 Department of Social and Health Services for 90 or 180 days under the Involuntary  
21 Treatment Act.

22        2        The portion of Pierce County's Claim G for refund of liquidated damages  
23 and interest thereon.

24        3        Pierce County's Claim J alleging that, in the development of contracts with  
25 PCSRN DSHS failed to follow the requirements of RCW Ch 71.24.300 and that the  
26 2003-2005 contracts between PCSRN and DSHS imposed obligations on PCSRN with

FINDINGS OF FACT AND CONCLUSIONS  
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1 respect to persons and services not covered by Medicaid, which obligations were not  
2 consistent with the those set forth in RCW 71 24 300(1) and with the amount of 'available  
3 resources" provided to PCRSN as specified in RCW 71 24 035(15)

4 4 Pierce County's Claim L alleging that the 2001-2003 and 2003-2005  
5 contracts between PCRSN and DSHS, including the process of reconciling inpatient  
6 community hospital billings specified therein, violated the provisions of those contracts  
7 requiring that they be consistent with federal Medicaid law and policy because the  
8 contracts required the expenditure of "Medicaid savings" to provide services to persons  
9 not enrolled in the Medicaid program or to provide services not covered by Medicaid

10 5 Defendants' claims for offset of monies allegedly owed by PCRSN to  
11 DSHS as a result of PCRSN's decision to use the MMIS billing and payment for  
12 processing inpatient community hospital billings and the subsequent reconciliation  
13 process associated with those claims and Pierce County's affirmative claim in response  
14 that the reconciliation process violates L 2005 \_\_\_\_\_ (Section 204(1)(b) Engrossed  
15 Substitute Senate Bill 6090 ) In addition Defendants' claims for offset, to any damages  
16 awarded at trial, from the Inpatient Emergency Pool (IPEP or IEP) funds provided to  
17 PCRSN

18 The Court heard testimony received documentary evidence, and issued an oral  
19 ruling on November 23, 2005 Now, in accordance with CR 52 the Court now makes the  
20 following findings of fact and conclusions of law

### 21 III. FINDINGS OF FACT

#### 22 A. Financial Responsibility for Long Term Patients

23 1 On October 7, 2005 the Court entered an Order re Cross Motions for  
24 Summary Judgment on Long Term Patients including Findings of Fact and Conclusions  
25 of Law as required by RCW 34 05 574 The Findings of Fact set forth in that Order are  
26 incorporated herein as if set forth in full

FINDINGS OF FACT AND CONCLUSIONS  
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2 PCRSN incurred unreimbursed costs as a result of the refusal by Western State Hospital (WSH) of patients committed to the custody of Department of Social and Health Services (DSHS) for 90 or 180 days under the Involuntary Treatment Act (ITA)

3 The amount of PCRSN's unreimbursed costs of caring for 90 and 180 day patients committed to the custody of the DSHS under the ITA who WSH declined to accept for census reasons is reasonably and appropriately determined by using the "Medicare Ratio of Costs to Charges" method presented through the testimony of Dr Neal Wallace and reflected in Trial Exhibit I, or \$772,588.07 for those patients listed on Exhibit I. Costs associated with these patients were calculated beginning at 12:01 AM on the day following WSH's refusal and continuing through the date of discharge from Puget Sound Behavioral Health (PSBH). PCRSN's unreimbursed costs are a liquidated sum.

~~4 Plaintiffs are entitled to interest relating to the patients identified in Trial Exhibit number 1. Simple interest at 12% per annum 30 days after discharge. Simple interest at 12% per annum running from 30 days after the discharge date through December 22, 2005, amounts to \$166,814.14 interest for the patients listed on Exhibit I. Each day thereafter, the interest accrues in a daily amount of \$254.~~

5 Sums which Pierce County received under the "Inpatient Emergency Pool" were not intended to compensate Pierce County for the costs of caring for patients committed by the courts to the custody of DSHS for 90 or 180 days pursuant to the Involuntary Treatment Act.

6 **BY AGREEMENT OF THE PARTIES UNREIMBURSED COSTS FOR 90/180 DAY PATIENTS BETWEEN OCTOBER 18, 2005 and DECEMBER 9, 2005 IS \$177,046.91**

7 On October 7, 2005, the Court entered an Order Granting Pierce County's Motion for Partial Summary Judgment on Liquidated Damages, including Findings of Fact and Conclusions of Law as required by RCW 34.05.074. The Findings of Fact set forth in that Order are incorporated herein as if set forth in full.

FINDINGS OF FACT AND CONCLUSIONS  
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1           8       Defendants withheld the sum of \$1,082,435.35 from payments to PCRSN  
2 as liquidated damages, as shown in Trial Exhibit 7. PCRSN was not economically  
3 harmed by the imposition of liquidated damages because it passed on the imposition of  
4 Liquidated Damages to its providers who in turn reduced services and thus, they were also  
5 not economically harmed.

6           9. ~~Simple interest at 12% per annum from the date when PCRSN would~~  
7 ~~normally have received the withheld funds through the time of trial amounts to~~  
8 ~~\$132,980.15. Additional interest from and after November 30, 2005, accrues in the daily~~  
9 ~~amount of \$355.99.~~

10           10       The amount of liquidated damages withheld by Defendants from PCRSN  
11 was passed through to PCRSN's community mental health providers, who in turn reduced  
12 the level of mental health services provided. If the liquidated damages had not been  
13 withheld, these funds would have been paid to PCRSN and used for additional mental  
14 health services. C.   **Contract Process and Contract Terms.**

15           1       The State, instead of directing all funding resources to state-only  
16 non-Medicaid services, was using its funding resources to draw down more federal dollars  
17 than were needed to provide all of the required Medicaid services to Medicaid recipients  
18 within the state of Washington's mental health system. These unused Medicaid dollars  
19 are commonly referred to as "Medicaid savings" dollars. Washington's mental health  
20 system benefited because more federal matching dollars were brought into the state of  
21 Washington.

22           2       By failing to stop the process whereby the State used its resources to draw  
23 down additional federal dollars not needed to provide the Medicaid services to patients  
24 within the state of Washington, the federal government tacitly agreed to this use. The

FINDINGS OF FACT AND CONCLUSIONS  
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0-000002702

1 biennial waivers between CMS and DSHS provide further evidence that the use of  
2 Medicaid funds was acceptable to the federal government

3       3     In the 01-03 and 03-05 biennia PCRSN contracted with DSHS to provide  
4 community mental health treatment services to both Medicaid and nonMedicaid  
5 recipients PCRSN objected to several aspects of the 2001-2003 and 2003-2005 RSN  
6 contracts prior to signing Pierce County made its objections to various aspects of the  
7 contracts through verbal exchanges, as well as written, e-mails, letters, and memorandum  
8 that commemorated or documented what the protests were about But it was not the  
9 features of the failure to provide sufficient state-only dollars to fund these contracts that  
10 were the subject of the protest or the objections  
11

12       4     Before signing the contracts, Pierce County knew that the contracts did not  
13 provide sufficient state-only funds to deliver all services Pierce County might provide  
14 under the contracts  
15

16       5     During the 01-03 contract period, Pierce County earnestly discussed  
17 terminating the contract with DSHS because it felt disadvantaged by the contract  
18

19       6     Pierce County realized that it was not required to sign the 01-03 or the 03-  
20 05 contracts and that it could terminate the contracts for convenience upon 90 days notice  
21

22       7     For the 01-03 and 03-05 contract period Pierce County RSN elected to  
23 sign that contracts despite the objections it raised  
24

25       8     DSHS contracted with Pierce County RSN to provide community mental  
26 health services within the amount of funding appropriated by the legislature The  
contracts identified specific services to be provided and the specific amounts that were  
available to provide those services Any services, and funds used by PCRSN to provide

FINDINGS OF FACT AND CONCLUSIONS  
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APPENDIX  
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1 services beyond the amount of state-only and/or Medicaid funds appropriated by the  
2 Legislature and allocated through the contracts and legislative appropriations were  
3 voluntarily provided

4  
5 9 Based on the total amount of funding appropriated by the Legislature and  
6 allocated to PCRSN under the contracts, it had available all of the financial resources it  
7 needed to pay for the services it provided under the 01-03 and 03-05 contracts

8 **D Federal Medicaid Law and Policy**

9 1 The general federal policy is that Medicaid dollars are to be used for  
10 Medicaid treatment services

11 2 In a 1998 letter from CMS (formerly known as HCFA) to Medicaid state  
12 directors CMS indicated that it would not permit the State to require Medicaid money to  
13 be used for non-Medicaid services CMS approved section 1915(b) waivers biennially  
14 Beginning July 1, 2005, CMS made it clear that Medicaid dollars were not to be used  
15 under any circumstances, voluntarily or mandated, to provide non-Medicaid services

16 3 During at least the interim between July 1, 2000 and before July 1, 2005,  
17 CMS tacitly permitted the use of Medicaid dollars for other services

18 4 By signing the 2001-2003 and 2003-2005 RSN contracts Pierce County  
19 RSN relied on Medicaid funds to pay for non-Medicaid services as was permitted by the  
20 federal government until July 1 2005 Pierce County knew that the contracts did not  
21 provide sufficient state-only funds to provide the non-Medicaid services required under  
22 the contract Sometime prior to July 1, 2005, CMS determined that it had been paying too  
23 much for Medicaid services in the State of Washington So, beginning July 1, 2005, CMS  
24 will pay less  
25  
26

FINDINGS OF FACT AND CONCLUSIONS  
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1           5       As a way to meet its obligations to provide short-term inpatient care to both  
2 non-Medicaid and Medicaid recipients under RCW 71.24.300 and the contracts with  
3 DSHS in August 2000, PCRSN purchased Puget Sound Hospital, and has operated it  
4 since as Puget Sound Behavioral Health Hospital, which is an Institution for Mentally  
5 Disease (IMD) as defined by Medicaid

6           6       Plaintiffs withdrew the claim that the 01-03 and 03-05 Medicaid rates paid  
7 under the contracts by the Defendants did not meet the actuarial soundness requirement of  
8 federal Medicaid law and policy

9 **E.     PCRSN's use of the MMIS system and DSHS's subsequent reconciliation.**

10          1       The 01-03 and 03-05 contracts require PCRSN to authorize inpatient  
11 hospitalization for its consumers when medically necessary, and to pay for short-term  
12 community mental health inpatient care to PCRSN recipients out of the funds it receives  
13 under the contracts

14          2       The contracts require PCRSN to either pay community hospitals directly  
15 for care those facilities provide to PCRSN authorized consumers, or PCRSN can elect to  
16 allow the community hospitals to submit an inpatient bill to DSHS through the MMIS  
17 payment system. MMIS is a separate accounting and billing system from the DSHS  
18 Mental Health Division's accounting system for the Regional Support Networks

19          3       DSHS' decision to allow community hospitals, caring for PCRSN patients  
20 to use the MMIS system, was made as an administrative convenience because of the  
21 complicated and time consuming process involved in the hospital billing process. If  
22 PCRSN elects to have the community hospitals bill through the MMIS payment system,  
23 DSHS is then acting as an intermediary. Thus, when community hospitals receive  
24 payment directly from the MMIS system for PCRSN authorized patients, the DSHS  
25 Mental Health Division must reconcile the funds advanced through the MMIS system

26  
  
FINDINGS OF FACT AND CONCLUSIONS  
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APPENDIX  
A-17

0-000002705

1           4       The DSHS Mental Health Division reconciles the funds advanced through  
2 the MMIS system from the contracted funds PCRSN receives through the regular  
3 monthly payment process by which the Mental Health Division distributes funds to  
4 PCRSN

5           5       For all relevant periods PCRSN elected to have community hospitals,  
6 other than Puget Sound Behavioral Health hospital use the MMIS billing and payment  
7 system for PCRSN authorized patients cared for in those other community hospitals In  
8 May 2003, PCRSN authorized Puget Sound Behavioral Health to use the MMIS billing  
9 and payment system Prior to that time, PCRSN paid Puget Sound Behavioral Health  
10 hospital directly for the care it provided to PCRSN authorized patients

11           6       Community hospitals, including Puget Sound Behavioral Health, have up  
12 to 12 months in which to submit the bill for inpatient care to the MMIS system, and  
13 PCRSN has a total of 18 months from the date of admission in which to dispute whether a  
14 particular patient is really a PCRSN patient or whether that patient belongs to another  
15 Regional Support Network This process is referred to as the '18 month reconciliation  
16 process

17           7       When PCRSN elects to use the MMIS system and DSHS advances funds to  
18 Puget Sound Behavioral Health or other community hospitals through the MMIS system,  
19 and the amount paid by MMIS exceeds the amount of funds withheld by DSHS for that  
20 purpose, PCRSN receives more funds than the amount of funds appropriated by the  
21 Legislature and provided for in the contracts

22           8       The Mental Health Division has continued the 18 month reconciliation  
23 process for PCRSN s inpatient claims incurred during the 2003-2005 contract period  
24 using funds appropriated by the Legislature for the 05-07 biennia

#### 25                               **IV CONCLUSIONS OF LAW**

##### 26   **A Long Term Patients.**

FINDINGS OF FACT AND CONCLUSIONS  
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APPENDIX  
A-18

0-000002706

1           1     On October 7, 2005 the Court entered an Order re Cross Motions for  
2 Summary Judgment on Long Term Patients, including Findings of Fact and Conclusions  
3 of Law as required by RCW 34 05 574, The Conclusions of Law set forth in that Order  
4 are incorporated herein as if set forth in full

5           2     Pursuant to the October 7, 2005 order, PCRSN is entitled to recover under a  
6 quasi contract or breach of contract claim, the unreimbursed costs of caring for patients  
7 committed by the courts to the custody of DSHS for 90 or 180 days pursuant to the  
8 Involuntary Treatment Act Plaintiffs have no obligation under the statutes or their  
9 contract with the state, to provide care to long-term patients Defendants breached their  
10 contracts with PCRSN by mistakenly interpreting those contracts as shifting responsibility  
11 for 90 or 180 day patients to PCRSN or alternatively under a quasi-contract theory

12           3     Under quasi-contract or breach of contract, the unreimbursed costs claimed by  
13 PCRSN and depicted in Trial Exhibit I are reasonable and appropriate

14           4     The appropriate measure of plaintiffs' unreimbursed costs is through the  
15 application of the Medicare Ratio of Cost To Charges to the charges incurred from 12 01  
16 a m following the day of commitment if WSH declines to timely admit the patient until  
17 the date the patient was discharged from PSBH The unreimbursed costs claimed by  
18 PCRSN and depicted in Trial Exhibit I and as set forth in the Findings are reasonable and  
19 appropriate

20           5     With respect to 90 or 180 day patients committed to the custody of DSHS  
21 whom Western State Hospital declined to accept for census-related reasons subsequent to  
22 the last date indicated on Exhibit I, defendants must compensate PCRSN for the  
23 unreimbursed costs of caring for those patients using the Medicare Ratio of Costs to  
24 Charges methodology set forth in Trial Exhibit I

25           6     PCRSN is entitled to recover the amount of unreimbursed costs set forth in  
26 the Findings and ~~pre-judgment interest on its unreimbursed costs from the date on which~~

FINDINGS OF FACT AND CONCLUSIONS  
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APPENDIX  
A-19

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1 a bill would have been issued at the rate of 12 % per annum, and calculated as set forth  
2 ~~in the Findings.~~ *PLAINTIFF'S ARE NOT ENTITLED TO PRE & POST JUDGMENT*  
3 B. Liquidated Damages *INTEREST BECAUSE THE STATE HAS NOT WAIVED*  
*SOVEREIGN IMMUNITY AS APPLIED TO THIS CASE*

4 1 PCRSN is entitled to a refund of the amount of liquidated damages  
5 withheld

6 2 ~~PCRSN is entitled to recover pre-judgment interest on the amounts of~~  
7 ~~liquidated damages withheld in the amounts and as calculated in Trial Exhibit 3.~~

8 3 Although neither the plaintiffs nor their providers suffered a loss from the  
9 withholding of liquidated damages, the State should in no way benefit from wrongfully  
10 withholding the liquidated damages from the plaintiffs. As a result, the Court has  
11 fashioned an equitable remedy: the PCRSN's entitlement to a refund of liquidated damages  
12 paid and interest thereon is conditioned upon the use of the refunded liquidated damages  
13 and interest to provide new or additional mental health services within its service area.  
14 Upon payment to PCRSN by Defendants of the amount representing the unlawfully  
15 withheld liquidated damages and interest thereon, PCRSN must hold those funds and not  
16 disburse them until a plan for their use is either approved by Defendants or by this Court.  
17 Defendants shall not unreasonably fail to approve such a plan.

18 C Contract Process and Contract Terms

19 1 RCW 71.24.035 is the statute whereby the Legislature gave DSHS and the  
20 Mental Health Division authority to contract for community mental health services within  
21 the funds appropriated by the Legislature. This statute along with RCW 43.88 requires  
22 DSHS to contract for community mental health services within the amount appropriated  
23 by the Legislature for each biennium.

24 2 RCW 71.24.300 placed requirements on Regional Support Networks to  
25 provide certain community services, again, within available resources. And RCW  
26 71.24.025 has defined available resources. There was confusion, until most recently, as to

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW - Page 13

LAW OFFICES  
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Seattle Washington 98101  
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S C A N N E D

1 whether the State's share of Medicaid dollars was included within available resources It  
2 is now clear that both the federal Medicaid dollars and the state funds used to match the  
3 federal Medicaid dollars are not included within the definition of available resources

4 3 The Pierce County Plaintiffs were not legally required to enter into the 01-  
5 03 and 03-05 contracts Despite any concerns or issues Pierce County had with the terms  
6 or process used for these contracts, it voluntarily and with full knowledge, entered into  
7 these contracts

8 4 According to RCW 71 24 300, the Pierce County RSN had no obligation to  
9 provide any mental health treatment resources for non-Medicaid patients beyond the  
10 resources that were available according to the statutory provision But in no case did  
11 Pierce County have the right to be compensated for services it did provide beyond the  
12 state-only resources provided under the contract because it chose to do so

13 5 If Pierce County believed that it did not have sufficient resources required  
14 by statute for the provision of these services its remedy was to not provide the services  
15 The remedy was not to provide millions of dollars' worth of services specifically  
16 identified in the contract with specific contractual amounts and then to later seek  
17 additional reimbursement for the already provided services

18 6 The remedy would have been for Pierce County not to have provided those  
19 services if it believed that they were not within the statutory definition Pierce County had  
20 a legal right to terminate the contracts by giving only 90 days notice and voluntarily  
21 chose not to terminate

22 7 The 01-03 and 03-05 contracts did not incorporate terms unlawful under  
23 ch 71 24 RCW

24 **D Contracts and Medicaid Law and Policy.**

25 1 During the relevant time period between July 1, 2000 and before July 1  
26 2005, CMS tacitly permitted the use of Medicaid dollars for non-Medicaid services

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW - Page 14

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APPENDIX  
A-21

0-000002709

1           2       The 01-03 and 03-05 contracts allocated state-only money and Medicaid  
2 money appropriated by the Legislature. Pierce County knew, before signing the contracts,  
3 that there would not be enough state-only money to cover all the contract services and that  
4 it would be using Medicaid funds provided under the waiver to cover non-Medicaid  
5 services.

6           3       Pierce County was not legally required to sign the 01-03 and 03-05  
7 contracts.

8           4       Pierce County's entry into these contracts was a voluntary acceptance and  
9 determination as to how all of the funds provided for under the contracts, both Medicaid  
10 and state-only funds, would in fact be used.

11          5       The 01-03 and 03-05 contracts are not invalid and do not violate federal  
12 policy in the expenditure of what has been referred to in this trial as Medicaid savings for  
13 non-Medicaid services.

14       E.    Reconciliation Process

15          1       Starting July 1, 2005, Medicaid funds cannot be used <sup>by the state</sup> to pay for or  
16 reconcile non-Medicaid services.

17          2       The 05-07 legislative appropriation for state-only mental health services is  
18 not to be used <sup>by the state</sup> to pay for services provided in previous biennia <sup>or reconcile</sup> *ESP*

19          3       By using the MMIS billing and payment system, Pierce County has been  
20 advanced funds beyond that appropriated by the legislature and allocated for the 01-03  
21 and 03-05 contracts which it must pay back.

22          4       The Defendants may send a bill to Pierce County monthly for past inpatient  
23 payments that it advanced through the MMIS system but not yet reconciled. Such bill  
24 shall not be sent until the particular 18-month reconciliation period has been exhausted  
25 and Pierce County is obligated to pay the bill within a reasonable amount of time after  
26 presentment not to exceed sixty (60) days.

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW - Page 15

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SCANNED

1 **F. Fees and Costs**

2 1 Each party pays its own attorney fees and costs associated with this  
3 lawsuit

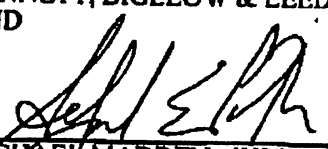
4 2 To the extent not specifically addressed above, all claims and  
5 counterclaims asserted by the Parties are dismissed with prejudice and without costs

6 DATED this 20<sup>th</sup> day of January, 2006

7  
8  
9  
10   
11 THE HONORABLE PAULA CASEY

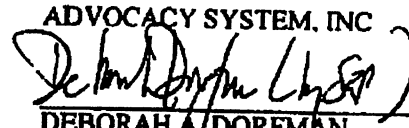
12 Presented by

13 BENNETT, BIGELOW & LEEDOM P S  
14 AND

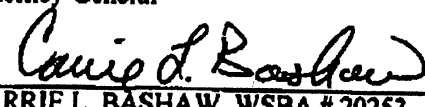
15   
16 MICHAEL MADDEN, WSBA # 8747  
17 SANFORD E PITLER, WSBA # 16567  
18 LINDA M COLEMAN WSBA # 32355  
MARIE R WESTERMEIER, WSBA #18623  
Attorneys for Plaintiff

WASHINGTON PROTECTION

ADVOCACY SYSTEM, INC

19   
20 DEBORAH A. DORFMAN,  
21 WSBA #23823  
22 DAVID B GIRARD, WSBA #1765  
23 Attorneys for Plaintiff WPAS

19 ROB MCKENNA  
20 Attorney General

21   
22 CARRIE L BASHAW, WSBA # 20253  
23 WILLIAM G CLARK WSBA # 9234  
24 ERIC NELSON, WSBA #27183  
25 IAN M BAUER WSBA #35563  
Assistant Attorney General  
Attorneys for Defendants

26 w:\wcl\cl\1759\00002\ram601297.doc

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW - Page 16

LAW OFFICES  
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1700 Seventh Avenue Suite 1900  
Seattle Washington 98101  
(206) 622-3511

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SCANNED

APPENDIX  
A-23

0-000002711-

FILED  
SUPERIOR COURT  
THURSTON COUNTY, WASH.

06 JAN 23 AM 8:46

BETTY J. GOULD, CLERK

BY S  
DEPUTY

HONORABLE PAULA CASEY

STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT

PIERCE COUNTY, et al.,

NO. 03-2-00918-8

Plaintiffs,

JUDGMENT AND ORDER

v.

STATE OF WASHINGTON, et al.,

Defendants.

JUDGMENT SUMMARY

1. Judgment Creditor: Pierce County Regional Support Network
2. Judgment Creditor's Attorney: Michael Madden and Sanford E. Pitler of Bennett Bigelow & Leedom, P.S.
3. Judgment Debtor: The State of Washington
4. Amount of Judgment: ~~\$1,855,023.42~~ 2,032,070.33 *RLB*
5. Prejudgment Interest: NONE
  - A. ~~Liquidated Damages: \$132,980.15 calculated through November 30, 2005, and accrues at \$355.90 per day through the date of this judgment.~~
  - B. ~~90 and 180 day patients identified in Trial Exhibit 1: \$163,008.63 calculated through November 7, 2005, and accruing at \$254.00 per day thereafter.~~
6. Judgment Interest: ~~\$609.90 per day until payment~~ NONE
7. Costs and Attorneys Fees: None.

06-9-00065-2

JUDGMENT AND ORDER - Page 1

APPENDIX  
A-24

LAW OFFICES  
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0-000004338

Cc: State  
A.G.

1 This matter came before the Court for trial on November 10, 14-17, and 21-23, 2005.  
2 Prior to trial, the Court entered a number of orders granting partial relief and dismissing  
3 certain claims and counterclaims. The Court entered Findings of Fact and Conclusions of  
4 Law on January 6, 2006, in which it addressed all remaining issues and specified the  
5 disposition of all of plaintiff's claims and defendants' counterclaims and claims for offset. In  
6 accordance with those Findings and Conclusions and its earlier orders referenced therein, the  
7 Court grants judgment as follows:

8 A. Plaintiff Pierce County Regional Support Network shall have judgment  
9 against the State of Washington in the amount of \$772,588.07, representing unreimbursed  
10 costs of caring for patients committed to Western State Hospital for 90 or 180 days under the

11 Involuntary Treatment Act that remained at PSBH through October 17, 2005, PLUS \$177,046.91  
12 FOR 90/180 DAY PATIENTS THAT REMAIN AT PSBH BETWEEN OCT. 18, 2005 & DEC. 9, 2005.  
13 B. ~~Plaintiff Pierce County Regional Support Network shall also have judgment~~

14 ~~against the State of Washington in the amount of \$163,008.63 representing prejudgment~~  
15 ~~interest (at 12% per annum) on unreimbursed costs (see Paragraph A above) calculated~~  
16 ~~through November 7, 2005 for patients that remained at PSBH through October 18, 2005,~~  
17 ~~with interest accruing thereafter at \$254.00 per day until the date of this Judgment, and at~~  
18 ~~\$254.00 per day in Post-Judgment interest until paid as stated in paragraph A above.~~

19 B Plaintiff Pierce County Regional Support Network shall have judgment  
20 against the State of Washington in the amount of \$ 1,082,435.35, representing liquidated  
21 damages withheld from payments due to Pierce County Regional Support Network, provided  
22 that upon payment to PCRSN by Defendants of the amount representing the unlawfully  
23 withheld liquidated damages and interest thereon, PCRSN must hold those funds and not  
24 disburse them until a plan for their use is either approved by Defendants or by this Court.  
25 Defendants shall not unreasonably fail to approve such a plan.

26 D. ~~Plaintiff Pierce County Regional Support Network shall also have judgment~~  
~~against the State of Washington in the amount of \$132,980.00, representing prejudgment~~

1 ~~interest (12% per annum) on liquidated damages (see Paragraph C above), calculated through~~  
2 ~~November 30, 2005, with interest accruing thereafter at \$355.90 per day until the date of this~~  
3 ~~Judgment, and at \$355.90 per day in Post-Judgment interest until paid.~~

4 *P.C.* In accordance with this Court's Order Re Cross Motions for Summary  
5 Judgment on Long Term Care Patients entered October 7, 2005 and effective December 9,  
6 2005, pursuant to RCW 34.05.594 and Ch. 71.05 RCW, Defendants are enjoined from  
7 declining to timely accept adult patients committed pursuant to Ch. 71.05 RCW for 90 or 180  
8 days who are at Puget Sound Behavioral Health or that Pierce County RSN is responsible for  
9 at the time of commitment, subject to the conditions set forth below:

10 1. Timely acceptance means that WSH must accept 90 or 180 day  
11 long-term ITA patients where (i) PSBH or PCRSN notifies WSH that an order  
12 of commitment has been entered and that the long-term patient is ready for  
13 transfer, and (ii) PSBH or PCRSN is able to transport the patient for arrival at  
14 WSH at a reasonable time, unless otherwise agreed to by the respective  
15 representatives. When PSBH or Pierce County RSN is unable to transport the  
16 patient for arrival by a reasonable time on the day of the court order, the  
17 patient shall be transported the next day.

18 2. Where, at the time WSH is notified that an order of  
19 commitment has been entered, a patient committed by a court to the custody of  
20 DSHS for 90 or 180 days has a medical condition that WSH is unable to  
21 provide for, or if there is an issue of patient safety involving factors other than  
22 WSH's census that makes it medically inappropriate or unsafe to accept the  
23 patient at WSH, WSH or DSHS shall have a reasonable period of time to  
24 arrange for the necessary care for the patient elsewhere. The costs to be paid  
25 by DSHS regarding any patient that WSH is not able to admit because of  
26 medical or safety issues shall be determined by the application of the Medicare

Ratio of Cost To Charges multiplied by the charges that accumulate for the patient from <sup>10:01 A.M. THE DAY FOLLOWING THE REFUSAL</sup> ~~the time~~ WSH refused to admit the patient for medical or safety reasons to the date the patient is discharged from the facility they are in.

F.D. In accordance with this Court's Order Granting Pierce County's Motion for Partial Summary Judgment on Liquidated Damages entered October 7, 2005, pursuant to RCW 34.05.574, Defendants are enjoined from further enforcement of automatic liquidated damages provisions of WAC 388-865-0203 and related provisions of its contracts with Pierce County RSN as currently written.

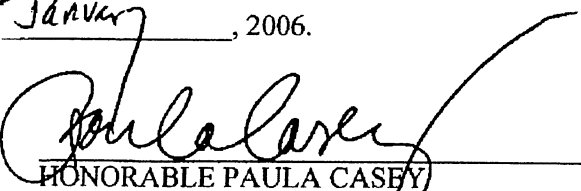
G.V. Pursuant to RCW 34.05.594 and Ch. 71.24 RCW, Defendants are enjoined, beginning July 1, 2005, from using Medicaid or non-Medicaid funds to pay for or reconcile <sup>DELIVERED PRIOR TO JULY 1, 2005.</sup> ~~previously delivered~~ non-Medicaid services. Nevertheless, consistent with the Findings and Conclusions entered by the Court, the Defendants ~~shall have the opportunity to~~ bill Pierce County RSN on a monthly basis for inpatient claims occurring prior to July 1, 2005, that Defendants advanced through the MMIS system prior to July 1, 2005, but are not yet reconciled.

H. Plaintiffs are also ordered to pay monthly bills presented by the Defendants for those inpatient payments that it advanced through the MMIS system, but not yet reconciled. Such bill shall not be sent until the full 18-month reconciliation period has been exhausted and Pierce County is obligated to pay the bill within <sup>60</sup> ~~30~~ days of presentment.

I. Except as provided herein and in the Court's Findings of Fact and Conclusions of Law, the complaint and counterclaim herein are dismissed with Prejudice.

J. All parties shall bear their own costs.

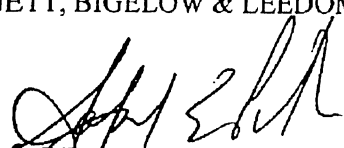
DATED this 20 day of January, 2006.

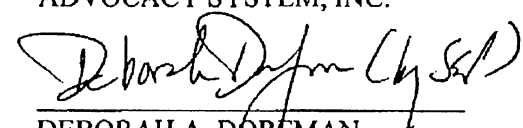
  
HONORABLE PAULA CASEY  
Thurston County Superior Court

1 Presented by:

2 BENNETT, BIGELOW & LEEDOM, P.S.

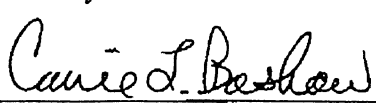
WASHINGTON PROTECTION AND  
ADVOCACY SYSTEM, INC.

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5 MICHAEL MADDEN, WSBA # 8747  
6 SANFORD E. PITLER, WSBA # 16567  
7 LINDA M. COLEMAN, WSBA # 32355  
8 MARIE R. WESTERMEIER, WSBA #18623  
9 Attorneys for Plaintiff

  
DEBORAH A. DORFMAN,  
WSBA #23823  
DAVID B. GIRARD, WSBA #1765  
Attorneys for Plaintiff WPAS

10 Copy received:

11 ROB MCKENNA  
12 Attorney General

13   
14 CARRIE L. BASHAW, WSBA # 20253  
15 WILLIAM G. CLARK, WSBA # 9234  
16 ERIC NELSON, WSBA #27183  
17 IAN M. BAUER, WSBA #35563  
18 Assistant Attorney General  
19 Attorneys for Defendants  
20  
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1 ☐ EXPEDITE  
2 ☒ Hearing is set  
3 Date October 7, 2005  
4 Time 9 00 AM  
5 Judge/Calendar The Honorable  
Paula Casey

FILED  
SUPERIOR COURT  
THURSTON COUNTY, WA

05 OCT -7 P2 55

DEPT. OF SOCIAL & HEALTH SERVICES  
Hon Paula Casey DEPUTY

7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
8 IN AND FOR THURSTON COUNTY

9 PIERCE COUNTY, a political subdivision of  
10 the State of Washington, PIERCE COUNTY  
11 REGIONAL SUPPORT NETWORK, a  
12 division of the Pierce County Department of  
13 Human Services, and PUGET SOUND  
14 BEHAVIORAL HEALTH, a psychiatric  
15 hospital owned and operated by Pierce County  
16 Regional Support Network, WASHINGTON  
17 PROTECTION AND ADVOCACY SYSTEM,  
18 INC.,

19 Plaintiffs,

20 vs

21 STATE OF WASHINGTON, STATE OF  
22 WASHINGTON, DEPARTMENT OF SOCIAL  
23 AND HEALTH SERVICES, MARYANNE  
24 LINDI BLAD in her official capacity as Acting  
25 Director of the Mental Health Division, and  
26 ANDREW PHILLIPS in his official capacity as  
Chief Executive Officer of WESTERN STATE  
HOSPITAL,

Defendants

NO 03-2-00918-8

ORDER GRANTING PIERCE  
COUNTY'S MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT ON LIQUIDATED  
DAMAGES

27 THIS MATTER came before the above-entitled Court on Plaintiff-Pierce County's  
28 Motion for Partial Summary Judgment on Liquidated Damages. The Court considered the  
29 pleadings, declarations and exhibits offered by the parties, and heard oral argument, and  
30 issued an oral decision on September 9, 2005. Having determined that there are no disputed

ORDER GRANTING PIERCE COUNTY'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT  
ON LIQUIDATED DAMAGES - Page 1

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Seattle, Washington 98101  
T (206) 622-5511 F (206) 622-8986

1 issues of fact for trial and that plaintiffs are entitled to judgment as a matter of law, IT IS  
2 HEREBY ORDERED, ADJUDGED, AND DECREED that Pierce County's Motion for  
3 Partial Summary Judgment on Liquidated Damages is hereby GRANTED in part, as set forth  
4 below

5  
6 Plaintiffs seek declaratory and injunctive relief under the Administrative Procedure  
7 Act, RCW Ch 34 05 RCW 34 05 574 requires the Court to set forth its findings of fact and  
8 conclusions of law with respect to its review under RCW 34 05 570 Accordingly, the Court  
9 makes the following findings of fact, conclusion of law and order

10  
11 **I. FINDINGS OF FACT**

12 (1) The Department of Social and Health Services (DSHS) promulgated WAC  
13 388-865-0203 (effective July 1, 2001), by which it purports to allocate "nonforensic adult  
14 beds at the state hospital utilized by the regional support network (RSN) based on the number  
15 of beds funded by the Legislature at that hospital" Subsection 3 of WAC 388-865-0203  
16 states that DSHS will "assess liquidated damages" against RSNs if the "in-residence census  
17 [at state hospitals] exceeds the funded capacity on any day or days within the fiscal year "  
18 Subsection 3 (a)-(d) sets forth a "formula" based upon which liquidated damages will be  
19 assessed against RSNs that "are in excess of their individual allocated census on the day or  
20 each day of over census" and "the amount of liquidated damages charged for each day will be  
21 the number of beds over the funded capacity of the hospital multiplied by the state hospital  
22 daily bed charge consistent with RCW 43 20B 325 "

24 (2) Contracts entered into between DSHS and PCRSN expressly reference and  
25 incorporate WAC 388-865-0203  
26

ORDER GRANTING PIERCE COUNTY'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT  
ON LIQUIDATED DAMAGES - Page 2

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1 (3) Application of the liquidated damages provisions of WAC 388-865-0203  
2 interferes with or impairs or immediately threatens to interfere with or impair the legal rights  
3 or privileges of Pierce County and has substantially prejudiced Pierce County by depriving it  
4 of funds which it otherwise would have received under its contracts with DSHS  
5

## 6 II. CONCLUSIONS OF LAW

7 1 Plaintiffs' claims under Ch 34 05 are reviewable under RCW 34 05 570(2)  
8 and (4)

9 2 DSHS exceeded its statutory authority in promulgating, applying, and  
10 continuing to apply the automatic liquidated damages provisions of WAC 388-865-0203(1)-  
11 (2) and acted outside of its statutory authority when it incorporated the liquidated damages  
12 provision of WAC 388-865-0203(1)-(2) into its contracts with PCRSN  
13

14 3 Accordingly, the liquidated damages provisions of WAC 388-865-0203 and  
15 related provisions of the PCRSN contracts with DSHS were and are invalid and  
16 unenforceable Pierce County is entitled to a refund of the amount of liquidated damages  
17 proven at trial to have been withheld and interest thereon  
18

## 19 III. Injunction

20 Pursuant to RCW 34 05 574, Defendants are enjoined from further enforcement of the  
21 automatic liquidated damages provisions of WAC 388-365-0203 and related provisions of its  
22 contracts with PCRSN as currently written

## 23 IV. Remaining Issues

24 The portion of Pierce County's motion that addresses the validity of the bed allocation  
25 formula contained in WAC 388-365-0203 is denied without prejudice, inasmuch as it appears  
26 that without the assessment of liquidated damages, Pierce County is not substantially

ORDER GRANTING PIERCE COUNTY'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT  
ON LIQUIDATED DAMAGES - Page 3

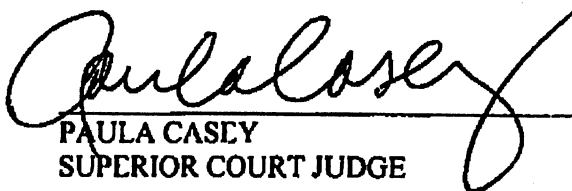
LAW OFFICES  
BENNETT BIGHLOW & LEEDOM P.S.  
1700 Seventh Avenue Suite 1900  
Seattle Washington 98101  
T (206) 622 5511 F (206) 622 8986

1 prejudiced by that portion of the rule The amount of liquidated damages and associated  
2 interest to which Pierce County is entitled is reserved for trial or other determination

3 The following documents were called to the Court's attention in connection with these  
4 motions

- 5 1 Plaintiffs' Motion for Partial Summary Judgment Re Liquidated Damages (filed
- 6 8/12/05)
- 7 2 Declaration of Diana Fitschen and Exhibits 1-3 attached thereto (filed 8/12/05),
- 8 3 Declaration of Richard Towell and Exhibit A attached thereto (filed 8/12/05),
- 9 4 Declaration of Marie Westermeier and Exhibits 1-17 attached thereto (filed
- 10 8/12/05),
- 11 5 Defendants' Brief in Opposition to Plaintiffs' Motion for Partial Summary
- 12 Judgment on Liquidated Damages (filed 8/29/05),
- 13 6 Declaration of Paul Bigelow and Exhibit 1 attached thereto (filed 8/29/05),
- 14 7 Declaration of Eric Nelson and Exhibits 1-13 attached thereto (filed 8/29/05),
- 15 8 Declaration of Steve Norsen and Exhibits 1-3 attached thereto (filed 8/29/05),
- 16 9 Declaration of Andrew Toulon and Exhibit attached thereto (filed 8/29/05),
- 17 10 Plaintiffs' Reply On Motion For Partial Summary Judgment Regarding
- 18 Liquidated Damages (filed 9/6/05),
- 19 11 Declaration of Stephen Greene (filed 9/6/05),
- 20 12 Declaration of David E Stewart (filed 9/6/05),
- 21 13 Declaration of Marie Westermeier and Exhibit attached thereto (filed 9/6/05)

22 Dated this 1<sup>st</sup> day of October, 2005

23   
24 PAULA CASEY  
25 SUPERIOR COURT JUDGE  
26

ORDER GRANTING PIERCE COUNTY'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT  
ON LIQUIDATED DAMAGES - Page 4

LAW OFFICES  
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Seattle Washington 98101  
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1 Presented By

2 BENNETT BIGELOW & LEEDOM, P S

3  
4 By

*[Signature]*  
Sanford Piller, WSBA #16567  
Michael Madden, WSBA # 08747  
Marie Westermeyer, WSBA #18623  
Linda Coleman, WSBA #32355

6 Attorneys for Pierce County Plaintiffs

7 Approved as to form

8 ROB McKENNA  
9 Attorney General

10 *[Signature: Carrie L. Bashaw]*  
WILLIAM L WILLIAMS, WSBA #6474

11 Sr Assistant Attorney General

CARRIF L BASHAW, WSBA #20253

12 Assistant Attorneys General

13 Attorneys for Defendants

14 *[Signature: Della Drinan]*, WSBA #28823  
15 Attorney for Plaintiff Washington Protection  
16 Advocacy System

17  
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ORDER GRANTING PIERCE COUNTY'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT  
ON LIQUIDATED DAMAGES - Page 5

LAW OFFICES  
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☐ EXPEDITE  
☒ Hearing is set:  
 Date: February 10, 2006  
 Time: 9:00 a.m.  
 Judge/Calendar: Hon. Paula Casey

FILED  
SUPERIOR COURT  
THURSTON COUNTY WASH.

'06 FEB 10 A10:27

BETTY J. GOULD CLERK  
DEPUTY

STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT

PIERCE COUNTY, et al.,

NO. 03-2-00918-8

Plaintiffs,

ORDER RE MOTION FOR  
CONTEMPT

v.

STATE OF WASHINGTON; et al.,

Defendants.

The Court, having reviewed plaintiffs' Motion for Contempt, and having considered the pleadings filed and oral argument of counsel, the declarations identified below, and being in all matters fully advised:

1. Declaration of David Stewart (filed 12-29-05);
2. Defendants' Response to Motion for Contempt (filed 01-04-06);
3. Declaration of Harold Madison and attachments thereto (filed 01-04-06);
4. Supplemental Declaration of Ira Klein (filed 01-04-06);
5. Declaration of Mark Seling (filed 01-05-06);
6. Declaration of David Stewart and attachments thereto (filed 01-05-06);
7. Declaration of Deborah Dorfman (filed 01-05-06); and
8. Declaration of Craig Awmiller and attachments thereto (filed 01-05-06).

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

ORDER RE MOTION FOR CONTEMPT

SCANNED:

ATTORNEY GENERAL OF WASHINGTON  
670 Woodland Square Loop SE  
PO Box 40124  
Olympia, WA 98504-0124  
(360) 459-6558

0-000004444

1 1. Plaintiffs' Motion for Contempt and request for attorney fees in connection with  
2 the motion are DENIED.

3 2. Because Defendants' were not in full compliance on January 6, 2006 with the  
4 order to timely accept, IT IS FURTHER ORDERED that Defendants' ~~have 90 days from~~ *are required*  
5 ~~January 6, 2006~~ to do whatever is necessary to timely accept Pierce County Regional Support  
6 Network and/or Puget Sound Behavioral Health ~~hospital~~ *long term* patients, including opening an  
7 additional ward at Western State Hospital if this is what is necessary to comply with the Final

8 Judgment and Injunction filed on January 23, 2006. *If the solution is to open an*  
9 *additional ward, the Defendants shall have 90 days from Jan 6, 2006,*  
ORDER DATED this ~~9th~~ *to open the ward to comply.* day of February, 2006.

10 *Paula Casey*  
11 HONORABLE PAULA CASEY

12 Approved as to Form:

13 ROB MCKENNA  
14 Attorney General

15 *Carrie L. Bashaw*  
16 WILLIAM L. WILLIAMS, WSBA #6474  
17 CARRIE L. BASHAW, WSBA #20253  
Assistant Attorneys General  
Attorneys for Defendants

18 BENNETT, BIGELOW & LEEDOM, P.S.

19 *[Signature]*  
20 MICHAEL MADDEN, WSBA # 8747  
21 SANFORD E. PITLER, WSBA # 16367  
22 Attorneys for Plaintiff Pierce County

WASHINGTON PROTECTION AND  
ADVOCACY SYSTEM, INC.

23 *[Signature]*  
24 DEBORAH DOREMAN, WSBA #23823  
25 DAVID B. GIRARD, WSBA #1765  
26 Attorney for Plaintiff WPAS

ORDER RE MOTION FOR CONTEMPT

SCANNED

ATTORNEY GENERAL OF WASHINGTON  
670 Woodland Square Loop SE  
PO Box 40124  
Olympia, WA 98504-0124  
(360) 459-6558

APPENDIX  
A-35

0-000004445

☐ EXPEDITE  
☐ No Hearing is Set  
☒ Hearing is Set:  
Date: February 10, 2006  
Time: 9:00 a.m.  
Honorable Paula Casey

**FILED**  
**SUPERIOR COURT**  
**THURSTON COUNTY, WASH.**  
**BETTY J. GOULD, CLERK**  
*February 10, 2006*  
BY                      *Z*  
DEPUTY

**STATE OF WASHINGTON**  
**THURSTON COUNTY SUPERIOR COURT**

PIERCE COUNTY, et al.,

Plaintiffs,

v.

STATE OF WASHINGTON; et al.,

Defendants.

NO. 03-2-00918-8

ORDER RE: MOTION TO  
VACATE/AMEND INJUNCTION

~~RECEIVED~~

On January 20, 2006, the Court after considering Defendants' Motion to Vacate or Amend the Injunction, the court file, pleadings filed in support and opposition, hearing oral argument, considering declarations identified below, and being fully advised:

1. Declaration of MaryAnne Lindeblad (filed 1/6/06);
2. Declaration of Eric Nelson and attachments thereto (filed 1/6/06);
3. Supplemental Declaration of MaryAnne Lindeblad (filed 1/13/06);
4. Declaration of Terri Card (filed 1/18/06);
5. Declaration of Frances I. Lewis (filed 1/18/06);
6. Declaration of Larry Sorenson (filed 1/18/06);
7. Declaration of Laura Stansbury (filed 1/18/06);
8. Declaration of David E. Stewart and attachments thereto (filed 1/18/06);
9. Second Supplemental Declaration of MaryAnne Lindeblad and attachments thereto (filed 1/19/06);
10. Declaration of Carrie Bashaw and attachments thereto (filed 1/19/06);

ORDER RE: MOTION TO VACATE OR  
AMEND INJUNCTION

SCANNED

ATTORNEY GENERAL OF WASHINGTON  
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Olympia, WA 98504-0124  
(360) 459-6558

APPENDIX  
A-36

0-000004446

1 11. Declaration of Andrew Phillips and attachments thereto (filed 1/20/06); and

2 12. Second Declaration of David E. Stewart and attachments thereto (filed 1/20/06).

3 NOW, THEREFORE, HEREBY ORDERS as follows:

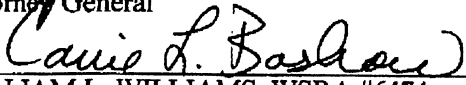
4 1. The Motion to Vacate or Amend the Injunction set forth in the October 7, 2005  
5 order and memorialized in the final Judgment filed on January 23, 2006 is DENIED.

6 DATED this 19<sup>th</sup> day of February, 2006.


7   
8 HONORABLE PAULA CASEY

9 Approved as to Form:

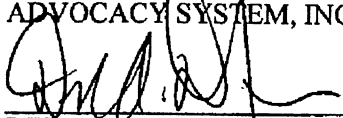
10  
11 ROB MCKENNA  
12 Attorney General

13   
14 WILLIAM L. WILLIAMS, WSBA #6474  
15 CARRIE L. BASHAW, WSBA #20253  
16 Assistant Attorneys General  
17 Attorneys for Defendants

18 BENNETT, BIGELOW & LEEDOM, P.S.

19   
20 MICHAEL MADDEN, WSBA # 8747  
21 SANFORD E. PITLER, WSBA # 16567  
22 LINDA M. COLEMAN, WSBA # 32355  
23 MARIE R. WESTERMEIER, WSBA #18623  
24 Attorneys for Plaintiff

WASHINGTON PROTECTION AND  
ADVOCACY SYSTEM, INC.

25   
26 DEBORAH A. DORFMAN,  
WSBA #23823  
DAVID B. GIRARD, WSBA #1765  
Attorneys for Plaintiff WPAS

ORDER RE: MOTION TO VACATE OR  
AMEND INJUNCTION

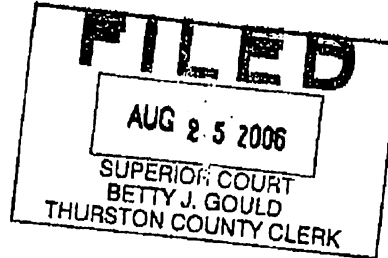
2  
S C A N N E D

ATTORNEY GENERAL OF WASHINGTON  
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(360) 459-6558

APPENDIX  
A-37

0-000004447

1 ☐ EXPEDITE  
2 X Hearing is set:  
3 Date: August 25, 2006  
4 Time: 9:00 a.m.  
5 Judge/Calendar: Honorable Paula Casey



6  
7  
8 STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT

9 PIERCE COUNTY, et al.,

10 Plaintiffs,

11 v.

12 STATE OF WASHINGTON, et al.,

13 Defendants.

NO. 03-2-00918-8

ORDER RE DEFENDANTS'  
SECOND MOTION TO VACATE

14  
15 Defendants filed a second Motion to Vacate the Injunction based on the passage of  
16 legislation pertinent to this Court's prior rulings in this case. Defendants appeared through  
17 their counsel, Carrie L. Bashaw. Plaintiffs appeared through their counsel, Sanford E. Pitler.  
18 After considering the court file and pleadings filed in support and in opposition, and the  
19 following declarations:

- 20 1. Dorfman Decl., Exs. 1-2, dated August 10, 2006.  
21 2. Pitler Decl., Exs. 1-8, dated August 10, 2006.  
22 3. Bashaw Decl., Exs. 1-2, dated August 21, 2006.

23 NOW THEREFORE IT IS HEREBY ORDERED:

24 Defendants' Motion to Vacate is ~~GRANTED~~ <sup>Denied.</sup> and the Injunction is dismissed in its  
25 entirety. <sup>SSP</sup>

26  
ORDER RE SECOND MOTION TO  
VACATE THE INJUNCTION

1

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SCANNED

APPENDIX  
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0-000004453

1 Pursuant to Rule of Appellate Procedure 7.2(c), this order will be formally entered  
2 when the Defendants have obtained permission from the Court of Appeals. *85/000*

3 DONE IN OPEN COURT this 25 day of August, 2006.

4  
5 *Paula Casey*  
6 HONORABLE PAULA CASEY

7 Presented by:

8 ROB MCKENNA  
Attorney General

9 *Carrie L. Bashaw*  
10 CARRIE L. BASHAW, WSBA #20253  
11 Assistant Attorneys General  
Attorneys for Defendants

12 Approved for Entry:

13 BENNETT, BIGELOW & LEEDOM, P.S.

14 *Sanford E. Pitler*  
15 SANFORD E. PITLER, WSBA # 16567  
16 Attorney for Pierce Plaintiffs

17 WASHINGTON PROTECTION AND ADVOCACY SYSTEM

18 *Deborah A. Dorfman*  
19 DEBORAH A. DORFMAN, WSBA #23823  
Attorney for Plaintiff WPAS

20  
21  
22  
23  
24  
25  
26  
ORDER RE SECOND MOTION TO  
VACATE THE INJUNCTION

2

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APPENDIX  
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0-000004454